

FILED  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2005 FEB 23 P 19  
BY: DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JOHN THOMAS PAVELCHAK

Defendant(s),

PRETRIAL ORDER PURSUANT  
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05CR96TS

The above-entitled action came on for pretrial conference **February 22, 2005**, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for **5/2/05**, (2 days) at **8:30 a.m.**. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by **4/29/05** along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes   X   No       

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

9

3. Pretrial motions are to be filed by: 3/18/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 418/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **Detained.**

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are: **Discovery to be provided by 2/25/05.**

9. Interpreter Needed: Yes ☐ No ☒ Language \_\_\_\_\_

DATED this 23 day of February, 2005.

**BY THE COURT:**



---

David Nuffer  
Magistrate Judge

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00096

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

A. Chelsea Koch, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 P 4:19

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

JOSE JESUS GONZALEZ-GARCIA

Defendant(s),

PRETRIAL ORDER PURSUANT  
TO RULE 17.1 F.R.Cr.P.

Case No. 2:05CR92TS

The above-entitled action came on for pretrial conference February 22, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 5/3/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Ted Stewart by 5/2/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No       

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

10

3. Pretrial motions are to be filed by: 3/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 4/19/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Ted Stewart's clerk before trial.

8. Other order and directions are: Discovery has been provided.

9. Interpreter Needed: Yes X No     Language Spanish

DATED this 22 day of February, 2005.

BY THE COURT:



---

David Nuffer  
Magistrate Judge

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00092

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States District Court  
District of Utah

---

Markus B. Zimmer  
Clerk of Court

Louise S. York  
Chief Deputy

February 24, 2005

In the matter of:

Kanth v. Third Dist Ct

U.S. District Court Case Number: 2:03-CV-321-PGC  
USCA Court Case Number: 04-4080

On 02/22/05, pursuant to the Order of the U.S. Court of Appeals for the Tenth Circuit, the  
Mandate in the above-cited case was filed and docketed.

Sincerely,

Markus B. Zimmer, Clerk

By: /S  
Aaron Paskins  
Appeal's Clerk

cc:  
Judge Paul G. Cassell  
Counsel of Record

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00321

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Frederick N. Green, Esq.  
7390 S CREEK RD STE 104  
SANDY, UT 84093  
EMAIL

Peggy E. Stone, Esq.  
UTAH ATTORNEY GENERAL'S OFFICE  
LITIGATION UNIT  
160 E 300 S 6TH FL  
PO BOX 140856  
SALT LAKE CITY, UT 84114-0856  
EMAIL

Rajani K. Kanth  
PO BOX 712513  
SALT LAKE CITY, UT 84171



United States District Court  
District of Utah

---

Markus B. Zimmer  
Clerk of Court

Louise S. York  
Chief Deputy

February 24, 2005

In the matter of:

Gardner v. Wyasket

U.S. District Court Case Number: 2:04-CV-142-TC  
USCA Court Case Number: 04-4115

On 02/22/05, pursuant to the Order of the U.S. Court of Appeals for the Tenth Circuit, the Mandate in the above-cited case was filed and docketed.

Sincerely,

Markus B. Zimmer, Clerk

By: /S  
Aaron Paskins  
Appeal's Clerk

cc:  
Judge Tena Campbell  
Counsel of Record

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00142

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Edson Gardner  
PO BOX 472  
FORT DUCHESNE, UT 84026

Lynda Kozlowicz  
PO BOX 472  
FT DUCHESNE, UT 84026

Kenneth McCook  
244 W 100 N  
ROOSEVELT, UT 84066

Kathie McCook  
244 W 100 N  
ROOSEVELT, UT 84066

John Diaz  
420 E 700 S  
ROOSEVELT, UT 84066

David P. Slim  
PO BOX 1671  
ROOSEVELT, UT 84066

John A. Slim  
PO BOX 1671  
ROOSEVELT, UT 84066

Athenya Slim  
PO BOX 1671  
ROOSEVELT, UT 84066

Daniel S. Sam, Esq.  
DANIEL S SAM PC  
319 W 100 S STE A  
VERNAL, UT 84078  
EMAIL

Brent M. Johnson, Esq.  
ADMINISTRATIVE OFFICE OF THE COURTS

PO BOX 140241  
SALT LAKE CITY, UT 84114-0241  
EMAIL

Nikki Garcia  
PO BOX 53  
WHITEROCKS, UT 84085

United States District Court  
District of Utah

---

Markus B. Zimmer  
Clerk of Court

Louise S. York  
Chief Deputy

February 24, 2005

In the matter of:

USA v. Heal

U.S. District Court Case Number: 2:03-CR-590-DB  
USCA Court Case Number: 04-4180

On 02/22/05, pursuant to the Order of the U.S. Court of Appeals for the Tenth Circuit, the Mandate in the above-cited case was filed and docketed.

Sincerely,

Markus B. Zimmer, Clerk

By: /S  
Aaron Paskins  
Appeal's Clerk

cc:  
Judge Dee Benson  
Counsel of Record

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cr-00590

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

Eric D. Petersen, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Robert E. Steed, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

Kristen B. Angelos, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

Scott Keith Wilson, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

FEB 23 P 1:50

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FEB 23 2005 FEB 22 2005

OFFICE OF JUDGE  
J. THOMAS GREENE  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff

v.

DUNN ALISA,

Defendant.

\*  
\*  
\*  
\*  
\*  
\*  
\*

CASE NO. 2:04CR00540

JTC

Appearing on behalf of:

Defendant Dunn Alisa

(Plaintiff/Defendant)

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, STEPHEN R. McCAUGHEY, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: February 18, 2005

(Signature of Local Counsel)

#02149

(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, LYNN M. KESLAR, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) X a non-resident of the State of Utah or, (ii)     a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates STEPHEN R. McCAUGHEY as associate local counsel.

Date: February 18, 2005

Check here     if petitioner is lead counsel.

(Signature of Petitioner)

Name of Petitioner: Lynn M. Keslar

Office Telephone: (510) 451-4600

(Area Code and Main Office Number)

Business Address: Law Offices of Paul Delano wolf

(Firm/Business Name)

1212 Broadway, Tenth Floor, Oakland, CA 94612

Street

City

State

Zip

16

### BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
State of California Supreme Court	California	December, 1997
United States District Court for the Northern District of California	California	December, 1997
United States District Court for the Eastern District of California	California	December, 1997
Ninth Circuit Court of Appeals	California	August, 2004
(If additional space is needed, attach separate sheet.)		

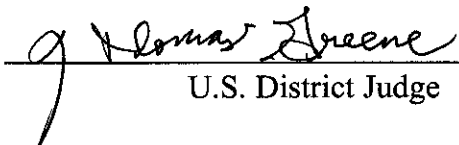
### PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
(If additional space is needed, attach a separate sheet.)		

### **ORDER OF ADMISSION**

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 23<sup>rd</sup> day of February, 2009.

  
U.S. District Judge

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 P 1:50

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FEB 23 2005  
FEB 22 2005  
OFFICE OF JUDGE  
J. THOMAS GREENE  
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff

v.

DUNN ALISA,

Defendant.

\*  
\* CASE NO. 2:04CR00540 JTC  
\*

\*  
\* Appearing on behalf of:  
\* Defendant Dunn Alisa  
\*

\*(Plaintiff/Defendant)  
\*

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, STEPHEN R. McCAUGHEY, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: February 18, 2005

#01249

(Signature of Local Counsel)

(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, PAUL DELANO WOLF, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) X a non-resident of the State of Utah or, (ii)     a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates STEPHEN R. McCAUGHEY as associate local counsel.

Date: February 18, 2005

Check here X if petitioner is lead counsel.

FEE PAID

(Signature of Petitioner)

Name of Petitioner: Paul Delano Wolf Office Telephone: (510) 451-4600  
(Area Code and Main Office Number)

Business Address: Law Offices of Paul Delano wolf  
(Firm/Business Name)  
1212 Broadway, Tenth Floor, Oakland, CA 94612

Street

City

State

Zip



### BAR ADMISSION HISTORY

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
State of California Supreme Court	California	1977
Ninth Circuit Court of Appeals	California	1977
All United States District Courts in the State of California	California	1977
United States District Courts in the States of Washington, Oregon and Hawaii	California	n/a
(If additional space is needed, attach separate sheet.)		

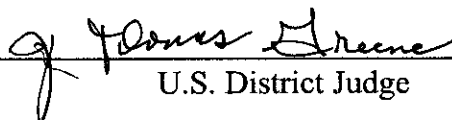
### PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
(If additional space is needed, attach a separate sheet.)		

### ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 23rd day of February, 2005.

  
U.S. District Judge

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00540

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Richard W. Daynes, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Mr. Stephen R McCaughey, Esq.  
10 W BROADWAY STE 650  
SALT LAKE CITY, UT 84101  
EMAIL

Lynn M. Keslar, Esq.  
LAW OFFICES OF PAUL DELANO WOLF  
1212 BROADWAY 10TH FL  
OAKLAND, CA 94612

Paul Delano Wolf, Esq.  
LAW OFFICES OF PAUL DELANO WOLF  
1212 BROADWAY 10TH FL  
OAKLAND, CA 94612

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

Bradford D. Myler (7089)  
Attorney for Plaintiff  
1278 South 800 East  
Orem, UT 84097  
Telephone: (801) 225-6925  
Facsimile: (801) 225-8417

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CLERK, U.S. DISTRICT COURT  
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FEB 22 2005

OFFICE OF JUDGE  
J. THOMAS GREENE

RECEIVED CLERK

FEB 22 2005

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

U.S. DISTRICT COURT

SHEILA HERSCH,

Plaintiff,

v.

JO ANNE BARNHART  
COMMISSIONER OF THE SOCIAL  
SECURITY ADMINISTRATION,

Defendant,

CIVIL ACTION NO.  
1:04CV00160 JTG

SCHEDULING ORDER

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by May 13, 2005.
3. Defendant's answer brief should be filed by June 13, 2005.
4. Plaintiff may file a reply brief by June 27, 2005.

DATED this 23rd day of February, 2005.

BY THE COURT:

J. Thomas Greene  
U.S. DISTRICT COURT JUDGE

7

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:04-cv-00160

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.  
MYLER LAW OFFICES  
1278 S 800 E  
PO BOX 970039  
OREM, UT 84097  
EMAIL

Scott Patrick Bates, Esq.  
US ATTORNEY'S OFFICE  
/  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 P 1:50

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FEB 22 2005

BENJAMIN A. HAMILTON (#6238)

Attorney for Defendant

356 East 900 South

Salt Lake City, Utah 84111

Telephone: (801) 322-3622

Facsimile: (801) 579-0606

DEPUTY CLERK

OFFICE OF JUDGE  
J. THOMAS GREENE

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FEB 22 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN JOE HARRIS,

Defendant.

ORDER CONTINUING JURY  
TRIAL DATE

Case No. 2:04-CR-0184TJG

Based upon the motion of the defendant and good cause appearing therefore;  
the Court makes the following findings:

1. The ends of justice served by continuing the trial in this matter outweigh the interest of  
the public and the defendant in a speedy trial.

2. The defendant consents to a continuance in this matter pursuant to 18 U.S.C.  
§ 3161(c)(2).

25

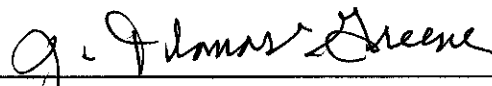
3. Counsel for the government stipulates to a continuance of the trial date in this case.

THEREFORE, IT IS HEREBY ORDERED that the Jury Trial be continued to the

6<sup>th</sup> day of April, 2005.

DATED this 23 of February, 2005.

BY THE COURT:

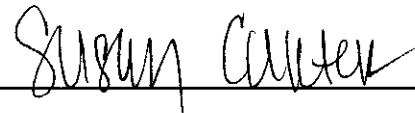


JUDGE J. THOMAS GREENE  
United States District Court

**CERTIFICATE OF MAILING**

I hereby certify that on the 18<sup>th</sup> day of February, 2005, a true and correct copy of the foregoing Order Continuing Jury Trial was mailed, postage prepaid, addressed as follows:

Karin M. Fojtik  
U.S Attorney's Office  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111



United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00184

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Karin Fojtik, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Benjamin A. Hamilton, Esq.  
356 E 900 S  
SALT LAKE CITY, UT 84111  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURTUnited States District Court  
District of Utah

FEB 23 4:19 PM

DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Allan Thomas Ault

aka Al Ault

aka Tom Ault

Case Number: 2:04CR152DS

Plaintiff Attorney: Lana Taylor, AUSA

Defendant Attorney: Henri Sisneros

Atty: CJA \_\_\_ Ret \_\_\_ FPD ☒

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

2/16/05

Date of Imposition of Sentence

Defendant's USM No.: 11405-081

Defendant's Residence Address: \_\_\_\_\_

Defendant's Mailing Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

3759 West 7800 South

Country USA

West Jordan, Utah 84088

Country USA

## THE DEFENDANT:

☒ pleaded guilty to count(s)

1,2,4,9,10,11

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.☐ was found guilty on count(s)

COP 10/27/04 Verdict \_\_\_\_\_

Title & SectionNature of OffenseCount  
Number(s)

21 USC §841(a)(1)

Attempted Manufacture of Methamphetamine

1,9

21 USC §841 (c)(1)

Possession of List 1 Chem w/Intent to Manufacture

2,10,11

21 USC §841(a)(1)

Possession w/Intent to Distribute Methamphetamine

4

☐ The defendant has been found not guilty on count(s)☒ Count(s) 3,5-8 (is)(are) dismissed on the motion of the United States.

## SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

120 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of

96 months

☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.

31



Defendant: Allan Thomas Ault  
Case Number: 2:04CR152DS

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a copayment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment, nor frequent business where alcohol is the chief item of order.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
**No Fine Imposed**

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

Defendant: Allan Thomas Ault  
Case Number: 2:04CR152DS

### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
Drug Enforcement Agency 2401 Jefferson Davis Highway Alexandria, VA 22301 Attn: Betty Myers, SFH	\$4184.06	\$4184.06

Totals: \$ 4184.06 \$ 4184.06

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☒ Restitution is payable as follows:

☒ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 600.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

Defendant: Allan Thomas Ault  
Case Number: 2:04CR152DS

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

### DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

### RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Request Admittance to R.D.A.P; transfer to Terminal Island facility to accommodate family visits

### CUSTODY/SURRENDER

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: February 17, 2005

David Sam  
David Sam  
United States District Judge

Defendant: Allan Thomas Ault  
Case Number: 2:04CR152DS

**RETURN**

I have executed this judgment as follows:

---

---

---

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00152

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Colleen K. Coebergh, Esq.  
29 S STATE ST #007  
SALT LAKE CITY, UT 84111  
EMAIL

Henri R. Sisneros, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

# United States District Court

## District of Utah

UNITED STATES OF AMERICA

vs.

Geovany Campos Jr.

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:02-cr-00038-001 DB

Plaintiff Attorney: John Huber

Defendant Attorney: Carlos Garcia

Atty: CJA \_\_\_ Ret \_\_\_ FPD ☒

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 09485-081

Defendant's Residence Address: \_\_\_\_\_

Country: \_\_\_\_\_

02/22/2005

Date of Imposition of Sentence

Defendant's Mailing Address: \_\_\_\_\_

SAME

SAME

Country: \_\_\_\_\_

## THE DEFENDANT:

☒ pleaded guilty to count(s)☐ pleaded nolo contendere to count(s)  
which was accepted by the court.☐ was found guilty on count(s)

COP 12/13/2004 Verdict \_\_\_\_\_

**I-Indictment****Title & Section**

18USC§922(g)(3)

**Nature of Offense**Possession of a Firearm by an Unlawful User of or a  
Person Addicted to a Controlled Substance**Count  
Number(s)**

I

Entered on docket

2/24/05 by: KVS

Deputy Clerk

☐ The defendant has been found not guilty on count(s)☒ Count(s) **II - Indictment** (is)(are) dismissed on the motion of the United States.**SENTENCE**Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the  
defendant be committed to the custody of the United States Bureau of Prisons for a term of

Upon release from confinement, the defendant shall be placed on supervised release for a term of

☒ The defendant is placed on Probation for a period of 36 months.  
The defendant shall not illegally possess a controlled substance.

43

Defendant: Geovany Campos Jr.  
Case Number: 2:02-cr-00038-001 DB

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall serve 180 days on home detention with electronic monitoring as a condition of supervision. The defendant shall remain in his residence at all times, except for approved leave as deemed appropriate by the probation office. Costs of electronic monitoring will be waived.
2. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment.
3. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
4. The defendant shall refrain from association with any known gang member.
5. The defendant shall enter and complete life skills classes as directed by the probation office.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other: \_\_\_\_\_

Defendant: Geovany Campos Jr.  
Case Number: 2:02-cr-00038-001 DB

**No Fine Imposed**

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

**RESTITUTION**

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other: \_\_\_\_\_
- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).
- ☐ An Amended Judgment in a Criminal Case will be entered after such determination

**SPECIAL ASSESSMENT**

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid



Defendant: Geovany Campos Jr.  
Case Number: 2:02-cr-00038-001 DB

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

### RECOMMENDATION

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
- 

### CUSTODY/SURRENDER

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

2-23-05

  
Dee Benson

United States District Judge

Defendant: Geovany Campos Jr.  
Case Number: 2:02-cr-00038-001 DB

**RETURN**

I have executed this judgment as follows:

---

---

---

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cr-00038

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

Brett L. Tolman, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

John W. Huber, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Carlos A. Garcia, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

# United States District Court

Central Division for the District of Utah

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 P 4:42  
DISTRICT OF UTAH  
BY:  
DEPUTY CLERK

Alma Jean Fritz

v.

Jo Anne B. Barnhart

## JUDGMENT IN A CIVIL CASE

Case Number: 2:04 cv 667 DS

This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

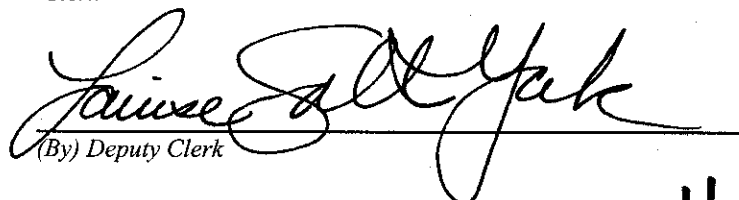
that the matter is remanded to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S. C. § 405 (g).

February 23, 2005

Date

Markus B. Zimmer

Clerk

  
(By) Deputy Clerk

16

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00667

True and correct copies of the attached were either mailed, faxed or e-mailed  
by the clerk to the following:

Mr. John J. Borsos, Esq.  
PO BOX 112347  
SALT LAKE CITY, UT 84147-2347  
EMAIL

Scott Patrick Bates, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

# United States District Court

## District of Utah

2005 FEB 23 P 1:14

UNITED STATES OF AMERICA

vs.

Kerry Dean Benally

**JUDGMENT IN A CRIMINAL CASE**(For Revocation of Probation or Supervised Release)  
(For Offenses Committed On or After November 1, 1987)Case Number: **2:97-cr-00274-001 DB**Plaintiff Attorney: **Barbara Bearson**Defendant Attorney: **Deirdre A. Gorman**Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: **06449-081**

Defendant's Residence Address: \_\_\_\_\_

Country: \_\_\_\_\_

**02/22/2005**

Date of Imposition of Sentence

Defendant's Mailing Address: \_\_\_\_\_

SAME

SAME

Country: \_\_\_\_\_

## THE DEFENDANT:

☒ admitted to allegation(s)

I - V

☐ pleaded nolo contendere to allegation(s)  
which was accepted by the court.☐ was found guilty as to allegation(s)

COP \_\_\_\_\_ Verdict \_\_\_\_\_

**Violation Number****Nature of Violation****Date Violation Occurred**

I.	The Defendant Operated a Motor Vehicle While the Influence of Alcohol.	03/05/2003
II.	The Defendant Submitted a Urine Samples which Tested Positive for Marijuana	08/26/2003
III.	The Defendant Pleaded Guilty to the Offense of Harassment	05/10/2004
IV.	The Defendant Pled Guilty to the Offense of a DUI	06/23/2004
V.	The defendant Pled Guilty to the Offense of Driving While Ability Impaired.	06/23/2004

Entered on docket  
2/24/05 by:  
KVS  
Deputy Clerk☐ The defendant has been found not guilty on count(s)☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.**SENTENCE**Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **90 days.**Upon release from confinement, the defendant shall be placed on supervised release for a term of **No Supervised Release.**

609

- ☐ The defendant is placed on Probation for a period of \_\_\_\_\_.  
The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

### CRIMINAL MONETARY PENALTIES

#### FINE

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
**No Fine Imposed**

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

#### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Name and Address of Payee

Amount of Loss

Amount of  
Restitution Ordered

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ \_\_\_\_\_, payable as follows:

☐ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

#### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

#### RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

#### CUSTODY/SURRENDER



Defendant: Kerry Dean Benally  
Case Number: 2:97-cr-00274-001 DB

Page 4 of 5

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

2-23-05

  
Dee Benson

United States District Judge

Defendant: Kerry Dean Benally  
Case Number: 2:97-cr-00274-001 DB

Page 5 of 5

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:97-cr-00274

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

Ms. Barbara Bearnson, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Ms. Deirdre A Gorman, Esq.  
205 26TH ST STE 32  
OGDEN, UT 84401  
EMAIL

United States District Court  
District of Utah

FILED  
CLERK'S OFFICE  
23 P 1:14

UNITED STATES OF AMERICA

vs.

Rodney Weston Smith

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

Case Number: 2:03-cr-00827-001 DB

Plaintiff Attorney: Robert E. Steed

Defendant Attorney: Deirdre A. Gorman

Atty: CJA ☒ Ret ☐ FPD ☐

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 11256-081

Defendant's Residence Address: \_\_\_\_\_

Country \_\_\_\_\_

02/22/2005

Date of Imposition of Sentence

Defendant's Mailing Address:

SAME

SAME

Country \_\_\_\_\_

COP 04/19/2004 Verdict \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

I-Indictment

Title & Section  
18USC§922 (g)(1)

Nature of Offense  
Possession of a Firearm and Ammunition by a  
Convicted Felon

Count  
Number(s)  
1

Entered on docket  
2/24/05 by:  
KVS  
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of 60 months

Upon release from confinement, the defendant shall be placed on supervised release for a term of 3 years.

☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.

34

Defendant: Rodney Weston Smith  
Case Number: 2:03-cr-00827-001 DB

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.

2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

3. The defendant shall refrain from association with any known gang members.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
No Fine Imposed

☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

Defendant: Rodney Weston Smith  
Case Number: 2:03-cr-00827-001 DB

## RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

## SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

## PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

## RECOMMENDATION

\_\_\_\_\_

Defendant: Rodney Weston Smith  
Case Number: 2:03-cr-00827-001 DB

- ☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:
- 

**CUSTODY/SURRENDER**

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

2-23-05

  
Dee Benson

United States District Judge

Defendant: Rodney Weston Smith  
Case Number: 2:03-cr-00827-001 DB

**RETURN**

I have executed this judgment as follows:

---

---

---

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal



United States District Court  
for the  
District of Utah  
February 24, 2005

kvs

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cr-00827

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Eric D. Petersen, Esq.  
US ATTORNEY'S OFFICE

/  
EMAIL

Robert E. Steed, Esq.  
US ATTORNEY'S OFFICE

/  
EMAIL

Ms. Deirdre A Gorman, Esq.  
205 26TH ST STE 32  
OGDEN, UT 84401  
EMAIL

US Probation  
DISTRICT OF UTAH

/  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

/  
EMAIL

FILED  
CLERK U.S. DISTRICT COURT

**United States District Court**  
**District of Utah**

2005 FEB 23 P 1:13

**UNITED STATES OF AMERICA**

**vs.**

**Jason Russell**

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:04-cr-00812-001 DB**

Plaintiff Attorney: **John W. Huber**

Defendant Attorney: **Henri Sisneros**

Atty: CJA \_\_\_ Ret \_\_\_ FPD **X**

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: **12239-081**

Defendant's Residence Address: \_\_\_\_\_

Country \_\_\_\_\_

**02/22/2005**

Date of Imposition of Sentence

Defendant's Mailing Address: \_\_\_\_\_

**SAME**

**SAME**

Country \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP **02/22/05** Verdict \_\_\_\_\_

**IV-Indictment**

**Title & Section**

**18USC§924(c)**

**Nature of Offense**

Possession of a Firearm in Furtherance of a Drug  
Trafficking Offense

**Count**

**Number(s)**

**IV**

Entered on docket

**2/24/05** by:

**KVS**

Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☒ Count(s) **II and III** (is)(are) dismissed on the motion of the United States.

**SENTENCE**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **60 months**.

Upon release from confinement, the defendant shall be placed on supervised release for a term of **3 years**.

☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.

**24**

Defendant: Jason Russell  
Case Number: 2:04-cr-00812-001 DB

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant will submit to drug/alcohol testing as directed by the probation office and pay a one time \$115.00 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office.
2. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
3. The defendant shall submit to a DNA sample. No fine is imposed.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
No Fine Imposed

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

Defendant: Jason Russell  
Case Number: 2:04-cr-00812-001 DB

## RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

## SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

## PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

## RECOMMENDATION

\_\_\_\_\_

Defendant: Jason Russell  
Case Number: 2:04-cr-00812-001 DB

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**The Court recommends that the defendant participates and completes the 500 hour drug re-hab program. The Court also recommends that the defendant be placed in a Federal Correctional Institution in the Phoenix, AZ. Area for family visitations.**

---


**CUSTODY/SURRENDER**

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: 2-23-05

  
\_\_\_\_\_  
Dee Benson  
United States District Judge

Defendant: Jason Russell  
Case Number: 2:04-cr-00812-001 DB

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00812

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

John W. Huber, Esq.  
US ATTORNEY'S OFFICE

/  
EMAIL

Mr. Richard G MacDougall, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

Lee C. Rasmussen, Esq.  
RASMUSSEN MINER & ASSOCIATES  
42 EXCHANGE PLACE  
SALT LAKE CITY, UT 84111  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

/  
EMAIL

US Probation  
DISTRICT OF UTAH

/  
EMAIL

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 A 9:39

\*\*\*\*\*  
J. CHARLES GROSVENOR )

Plaintiff, )

vs. )

Case No. 2:03CV00897 DS

MEMORANDUM OPINION  
AND ORDER

QWEST CORPORATION, and THE  
QWEST OCCUPATIONAL SHORT  
TERM DISABILITY PLAN, )

Defendant. )

\*\*\*\*\*

I. INTRODUCTION.

Plaintiff J. Charles Grosvenor brought suit against Defendants, Qwest Corporation ("Qwest Corporation") and the Qwest Disability Plan (the "Plan"), collectively ("Qwest"), alleging that he was improperly denied short-term disability benefits by Defendants in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001. Pending before the court for decision are the parties' cross motions for summary judgment. The Plan is an employee welfare benefit plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq. Plaintiff applied for, and was denied, short-term disability benefits. The Qwest Employee Benefits Committee ("EBC"), is the Plan Administrator and performed the final review



of Plaintiff's claim under the Plan. Plaintiff filed this action pursuant to the provisions of ERISA, 29 U.S.C. § 1131, et seq. seeking judicial review of the decision denying him short-term disability benefits.

Plaintiff is a former employee of Qwest Corporation. After allegedly suffering from severe headaches, dizziness, vertigo and tinnitus, Mr. Grosvenor began a leave of absence from his employment. Mr. Grosvenor applied for short term disability benefits ("STD" benefits) under the Plan. Between October 30, 2000 and November 9, 2000, Grosvenor and Catherine Parks, a registered nurse employed by Qwest to review STD claims, had several discussions regarding Grosvenor's medical condition and the terms of the Plan.

On January 16, 2001, Grosvenor was notified by letter that his claim for STD benefits had been denied for the period after October 30, 2001. Ms. Parks had advised Grosvenor that this denial was based upon his failure to provide objective clinical information to support his disability. Grosvenor appealed the denial of his STD benefit claim by letter dated March 5, 2001. On May 18, 2001, Barry Kern, M.D., Appellate Reviewer upheld the denial of Grosvenor's claim concluding that "no exact etiology" was found and that the findings were not consistent with continued disability.

### SUMMARY JUDGMENT STANDARD

Under Fed. R. Civ. P. 56, summary judgment is proper only when the pleadings, affidavits, depositions or admissions establish there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party.<sup>1</sup> E.g., Celotex Corp. v. Catrett, 477 U.S. 317 (1986). In determining whether summary judgment is appropriate, the court views all relevant facts in the light most favorable to the party opposing the motion. Summary judgment is appropriate only where the evidence "is free from doubt so that all reasonable [persons] would come to the same conclusion" Schnuphase v. Storehouse Markets, 918 P.2d 476, 477 (Utah 1996).

### III. DISCUSSION

#### **A. Standard of Review.**

The court has previously held that the arbitrary and capricious standard of review applies to the Administrator's Decision where, as in this case, the plan gives its administrator broad discretionary authority to decide claims as the Plan does.

---

<sup>1</sup>Whether a fact is material is determined by looking to relevant substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

See, Trujillo v. Cyprus Amax Minerals Co. Retirement Plan Committee, 203 F. 3d 733, 736 (10<sup>th</sup> Cir 2000) (quoting Charter Canyon Treatment Ctr. v. Pool Co., 153 F.3d 1132, 1135 (10<sup>th</sup> Cir. 1998) ("A court reviewing a challenge to a denial of employee benefits under 29 U.S.C. § 1132(a)(1)(B) applies an "arbitrary and capricious" standard to a plan administrator's actions if the plan grants the administrator discretionary authority to determine eligibility for benefits or to construe the plan's terms.'")

In reviewing the Plan Administrator's decision under the arbitrary and capricious standard, the Court is "limited to the 'administrative record' - the materials compiled by the administrator in the course of making his decision." Hall v. UNUM Life Ins. Co. of Am., 300 F.3d 1197, 1201 (10<sup>th</sup> Cir. 2002). Further, in making its determination under this standard, the Court looks to whether substantial evidence supported the administrator's decision, whether the administrator based its decision on a mistake of law, and whether the administrator conducted its review in bad faith, or under a conflict of interest. Sandoval v. Aetna Life and Casualty Ins. Co., 967 F.2d 377, 380 n.4 (10<sup>th</sup> Cir. 1992).

To withstand judicial scrutiny, "the Administrator's decision need not be the only logical one nor even the best one." Kimber v. Thiokol Corp., 196 F.3d 1092, 1098 (10<sup>th</sup> Cir. 1999) (quoting Woolsey v. Marion Labs., Inc., 934 F.2d 1452, 1469 (10<sup>th</sup> Cir. 1991). "The reviewing court 'need only assure that the administrator's

decision falls somewhere on a continuum of reasonableness - even if on the low end.'" Id. (quoting Vega v. Nat'l Life Ins. Serv. Inc., 188 F.3d 287, 297 (5<sup>th</sup> Cir. 1999)). Thus, the Court will uphold the administrator's decision unless it is not supported by any reasonable basis.

#### **B. Review of Plan Decision.**

Qwest contends that the denial of disability benefits to Plaintiff was not arbitrary or capricious and must be upheld. Plaintiff urges that the decision was arbitrary and capricious and must be set aside.

As stated above, under the arbitrary and capricious standard of review, "[t]he [administrator's] decision will be upheld unless it is not grounded on any reasonable basis. The reviewing court need only assure that the administrator's decision fall[s] somewhere on a continuum of reasonableness - even if on the low end.'" Cirulis v. Unum Corp., 321 F.3d 1010, 1013 (10<sup>th</sup> Cir. 2003) (quoting Kimber v. Thiokol Corp., 196 F.3d 1092, 1097 (10<sup>th</sup> Cir. 1999)). Under the Qwest Disability Plan, Grosvenor was entitled to STD benefits only if he provided objective medical documentation, such as x-rays, CT scans or MRIs, confirming his inability to perform his job duties. Def. Memorandum in Support of Motion for

Summary Judgment Statement of Facts Nos. 8,9. However, Grosvenor's physician confirmed that his x-rays, CT scans and MRIs were "unrevealing" and that he was not able to determine the etiology of his symptoms. Id. at No. 11. Further tests by Grosvenor's physicians were also inconclusive in determining or diagnosing the etiology of Grosvenor's alleged symptoms. Given this evidence, the Plan Administrator reasonably concluded that Plaintiff failed to provide objective evidence that he was disabled under the Qwest Plan.

In Kimber v. Thiokol Corporation et al., 196 F3d 1092 (10<sup>th</sup> Cir. 1999), the Plan Administrator denied the Plaintiff's claim for disability benefits after determining that he failed to provide objective medical evidence of disability. Id. at 1099. Similar to this case, Plaintiff argued in Kimber that his physicians' statements that he was "disabled" constituted objective medical evidence. The Tenth Circuit rejected this contention stating:

Second, Mr. Kimber argues that Thiokol acted arbitrarily by finding that there was a lack of objective evidence of total disability based upon diabetes. He points to a letter and two reports by Dr. Williams to support his claim . . . . A rational plan administrator could find these documents insufficient because they do not contain supporting data for the conclusions reached; for example, the letter from Dr. Williams merely states that Mr. Kimber is "totally disabled secondary to diabetes, hypertension and the problems associated with this," but does not include any reference to clinical data. . . .

Id. As in Kimber, Grosvenor's physician's statements that he was disabled do not constitute objective documentation of disability. Grosvenor's physicians never supported their opinion that Plaintiff was disabled with objective medical evidence and were in fact contradicted by the test results from the IHC Balance Center and corresponding release for Plaintiff to return to work. Thus, in accord with Kimber, this Court determines that the Plan Administrator acted reasonably in denying Plaintiff's claim.

Plaintiff further alleges that the Plan Administrator acted arbitrarily and capriciously in failing to consider evidence submitted after May 2001, when the Appellate Reviewer upheld the denial of Plaintiff's claim. Defendants' Memorandum, pp. 8-9. However, the Tenth Circuit has consistently held that a Plan Administrator's decision is not arbitrary and capricious for failing to consider evidence not before it. The Tenth Circuit has stated that "[i]n effect, a curtain falls when the fiduciary completes its review, and for purposes of determining if substantial evidence supported the decision, the district court must evaluate the record as it was at the time of the decision." Sandoval v. Aetna Life and Casualty Ins. Co., 967 F.2d 377 (10<sup>th</sup> Cir. 1992). Therefore the Plan Administrator did not act arbitrarily and capriciously with respect to the evidence submitted after the denial of benefits was upheld.

### III CONCLUSION

For the reasons stated as well as those set forth in Defendants' pleadings, Plaintiff's Motion for Summary Judgment is **DENIED**, and Defendants' Motion for Summary Judgment is **GRANTED**. The Clerk of the Court is requested to enter final judgment accordingly.

**IT IS SO ORDERED.**

DATED this 22nd day of February, 2005.

BY THE COURT:



\_\_\_\_\_  
DAVID SAM  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00897

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Brian S King, Esq.  
336 S 300 E STE 200  
SALT LAKE CITY, UT 84111  
EMAIL

Kathryn Ogden Balmforth, Esq.  
WOOD CRAPO LLC  
60 E SOUTH TEMPLE STE 500  
SALT LAKE CITY, UT 84111  
JFAX 9,3666061

J. Mark Baird, Esq.  
BAIRD LAW FIRM LLC  
2036 E 17TH AVE  
DENVER, CO 80206



FILED  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

2005 FEB 23 P 4:19  
DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA  
Plaintiff(s),

vs.

RENZO CAMPANAS-CARDENAS  
Defendant(s),

PRETRIAL ORDER PURSUANT  
TO RULE 17.1 F.R.Cr.P.

Case No. 1:05CR17DB

The above-entitled action came on for pretrial conference February 22, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 5/2/05, (2 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dee Benson by 4/29/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No       

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

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3. Pretrial motions are to be filed by: 3/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 4/18/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: **Detained.**

7. All exhibits will be premarked before Judge Dee Benson's clerk before trial.

8. Other order and directions are: **Discovery has been provided.**

9. Interpreter Needed: Yes X No     Language Spanish

DATED this 22 day of February, 2005.

BY THE COURT:



---

David Nuffer  
Magistrate Judge

kvs

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:05-cr-00017

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Philip A. Reichenbach, Esq.  
140 W 9000 S #2  
SANDY, UT 84070

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

Bradford D. Myler (7089)  
Attorney for Plaintiff  
1278 South 800 East  
Orem, UT 84097  
Telephone: (801) 225-6925  
Facsimile: (801) 225-8417

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CLERK U.S. DISTRICT COURT

2005 FEB 23 P 2:35

BY: [Signature]

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FEB 22 2005

**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

U.S. DISTRICT COURT

TRAVIS CANTRELL,

Plaintiff,

v.

JO ANNE BARNHART  
COMMISSIONER OF THE SOCIAL  
SECURITY ADMINISTRATION,

Defendant,

**CIVIL ACTION NO.  
2:04CV01059 DB**

**SCHEDULING ORDER**

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by May 30, 2005.
3. Defendant's answer brief should be filed by June 30, 2005.
4. Plaintiff may file a reply brief by July 14, 2005.

DATED this 23 day of February, 2005.

BY THE COURT:

  
U.S. DISTRICT COURT JUDGE

DAVID NUFFER  
U.S. Magistrate Judge

^

United States District Court  
for the  
District of Utah  
February 24, 2005

kvs

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-01059

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bradford D. Myler, Esq.  
MYLER LAW OFFICES  
1278 S 800 E  
PO BOX 970039  
OREM, UT 84097  
EMAIL

Scott Patrick Bates, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

U.S. DISTRICT COURT

219

Judicial District Court in the spring of this year. As that trial is currently scheduled to go forward, it is not realistic to expect counsel to prepare for that trial and to prepare and present the trial in this matter before commencement of that murder trial. Further, if that murder trial goes for its full possible duration, it would not be appropriate to require counsel herein to be ready to go forward with this trial in this case prior to the end of June, 2005.

2. Also, a defense counsel in this case anticipates the birth of a child with a current anticipated due date of June 2, 2005.

3. Under the totality of these circumstance, the Court should schedule two trial settings, one based on the possibility that the murder trial to be conducted by Ms. Corporon in state court does not go forward, and one in anticipation of the possibility that said trial goes forward for its full possible duration.

4. Accordingly, a first trial setting is set in this matter for Monday, May 9, 2005. The trial herein is anticipated to last four days.

5. Ms. Corporon is ordered to advise this court by close of business two weeks into the anticipated murder trial, if that murder trial commences, that the murder trial has gone forward, and is still in progress. In no event, however, shall Ms. Corporon advise this court of the status of that murder trial later than Monday, April 25, 2005. If that murder trial is still in progress at that point in time, then the trial date of May 9<sup>th</sup> shall be stricken without further hearing pursuant to this order of this court, and the findings herein.

6. A second trial date is scheduled in this matter for June 27, 2005 and following, to go forward in the event that the trial set for May 9, 2005 does not proceed.

7. The time between the hearing of February 15, 2005 and the commencement of trial, either on May 9<sup>th</sup> or June 27, 2005, is excluded from calculations under the Speedy Trial Act, for reason that the trial dates have been set as they have been set within this order for purposes of maintaining continuity of counsel herein, within the meaning of that Act.

DATED THIS 22 day of February, 2005.

BY THE COURT:



---

DAVID O. NUFFER  
United States District Court Judge



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I mailed a copy of the foregoing to:

VERNON G. STEJSKAL  
Drug Enforcement Administration  
348 East South Temple  
Salt Lake City, Utah 84111

BEL-AMI J. DEMONTREUX  
Attorney at Law  
180 South 300 West, Suite 290  
Salt Lake City, Utah 84101

JOSEPH F. ORIFICI  
Attorney at Law  
4625 south 2300 East, Suite 211  
Holladay, Utah 84117

VANESSA M. RAMOS-SMITH  
Utah Federal Defender Office  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101

DAVID V. FINLAYSON  
Attorney at Law  
43 East 400 South  
Salt Lake City, Utah 84111

MICHAEL W. JAENISH  
Attorney at Law  
150 South 600 East, #5C  
Salt Lake City, Utah 84102

on the 28 day of February, 2005.

  
\_\_\_\_\_  
Secretary

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00153

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Vernon G. Stejskal, Esq.  
DRUG ENFORCEMENT ADMINISTRATION  
METROPOLITAN NARCOTICS TASK FORCE  
348 E SOUTH TEMPLE  
SALT LAKE CITY, UT 84111  
EMAIL

Bel-Ami J. de Montreux, Esq.  
180 S 300 W #350  
SALT LAKE CITY, UT 84101  
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Ms. Mary C. Corporon, Esq.  
CORPORON & WILLIAMS PC  
808 E SOUTH TEMPLE  
SALT LAKE CITY, UT 84102  
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Joseph F. Orifici, Esq.  
4625 S 2300 E STE 211  
HOLLADAY, UT 84117  
EMAIL

Vanessa M. Ramos-Smith, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

David V. Finlayson, Esq.  
43 E 400 S  
SALT LAKE CITY, UT 84111  
EMAIL

Mr. Michael W Jaenish, Esq.  
150 S 600 E #5C  
SALT LAKE CITY, UT 84102  
EMAIL

United States Marshal Service

DISTRICT OF UTAH

,  
EMAIL

US Probation

DISTRICT OF UTAH

,  
EMAIL

H. DON SHARP, #2922  
Attorney for Defendant  
Key Bank Building, Suite 200  
2491 Washington Blvd.  
Ogden, Utah 84401  
Telephone: (801) 621-1567

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 P 1:14

DISPATCH ROOM

5:11  
DEPT. CLERK

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FEB 22 2005

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

UNITED STATES OF AMERICA,	)	ORDER TO PROVIDE
	)	DEFENDANT WITH READING
	)	GLASSES
Plaintiff,	)	
Vs.	)	
MICHAEL K. HANSEN,	)	Case No. 1:03 cr 00080
Defendant.	)	JUDGE: DEE V. BENSEN

Based on the defendant's request, in open court at the time of entry of plea on January 10, 2005, that the court order the U.S. Marshall to arrange for the defendant be provided with reading glasses and good cause showing"

IT IS HEREBY ORDERED that the U.S. Marshall arrange for the defendant to be fitted for and receive reading glasses.

Dated this 23<sup>rd</sup> day of February, 2005

*Dee Benson*

DEE V. BENSEN, DISTRICT JUDGE

54

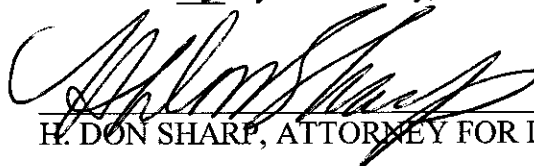
CERTIFICATE OF MAILING

I hereby certify that I mailed a true copy of the forgoing "Order to provide the Defendant with reading Glasses" to the following.

Lana Taylor  
Asst. U.S. Attorney  
348 East South Temple  
Salt Lake City, Utah 84111

U.S. Marshall  
350 So. Main Street  
Salt Lake City, Utah 84101

Dated this 12 day of February, 2005

A handwritten signature in cursive script, appearing to read "H. Don Sharp", written over a horizontal line.

H. DON SHARP, ATTORNEY FOR DEFENDANT

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:03-cr-00080

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

Mr. Don Sharp, Esq.  
2491 WASHINGTON BLVD #200  
OGDEN, UT 84401  
JFAX 8,801,3932340

Colleen K. Coebergh, Esq.  
29 S STATE ST #007  
SALT LAKE CITY, UT 84111  
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RICHARD D. BURBIDGE, Esq., #0492  
STEPHEN B. MITCHELL, Esq., #2278  
JEFFERSON W. GROSS, Esq. (#8339)  
BURBIDGE & MITCHELL  
Attorneys for Plaintiff  
215 South State, Suite 920  
Salt Lake City, Utah 84111  
801 + 355-6677

FILED  
CLERK U.S. DISTRICT COURT  
FEB 23 P 3:14  
FEB 22 2005  
U.S. DISTRICT COURT  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

FRANKLIN COVEY CLIENT SALES, )  
INC., a Utah corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
WORLD MARKETING ALLIANCE, )  
INC., a corporation, and WORLD )  
FINANCIAL GROUP, INC., a )  
corporation, )  
 )  
Defendants. )

**ORDER**

Civil No. 2:02-cv-00270

Judge Dee Benson  
Magistrate Judge Alba

Based upon the stipulation of the parties, and good cause appearing therefore,  
IT IS HEREBY ORDERED that Plaintiff Franklin Covey Client Sales, Inc. may have  
a 14-day extension of time to and including March 15, 2005 in which to respond to  
Defendant World Marketing Alliance, Inc.'s Motion to Alter or Amend Judgment

4479

Regarding Prejudgment Interest and Motion for Judgment as a Matter of Law and to  
Amend the Judgment, or, Alternatively, for a New Trial.

DATED this 23<sup>rd</sup> day of February, 2005.

BY THE COURT:



DEE BENSON  
UNITED STATES DISTRICT COURT JUDGE

APPROVED AS TO CONTENT  
AND FORM:

BURBIDGE & MITCHELL

By 

STEPHEN B. MITCHELL  
Attorneys for Plaintiff

KIRTON & McCONKIE

By 

R. WILLIS ORTON  
Attorneys for Defendant World  
Marketing Alliance, Inc.



United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-00270

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

David E. Spalten, Esq.  
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Stephen D. Kelson, USB No. 8458  
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Attorney for Defendant Cohen Fox  
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Telephone: (801) 521-3773

FILED  
CLERK, U.S. DISTRICT COURT  
FEB 23 P 1:14  
JURY CLERK

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FEB 22 2005

U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

MARK D. ALBRIGHT and SHEREE  
ALBRIGHT, husband and wife, et al.,

Plaintiff,

vs.

COHEN FOX P.A., et al.,

Defendants.

ORDER FOR SUBSTITUTION OF  
COUNSEL

Civil No. 2:03CV00517  
(Consolidated Civil No. 2:04CV00202)

Magistrate Judge: Samuel Alba

The Court having considered the Application of Kipp and Christian, P.C. to substitute as counsel for Defendants Cohen Fox, P.C., Robert Cohen, and Michele Primeau, and the clients having given consent thereto as required by Rule 83-1.4, such substitution is approved and so ordered.

DATED this 23 day of February, 2005.

BY THE COURT

  
United States District Judge

145

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00517

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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C/O BETH EVARLEY, AUTH AGT  
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James Bjork  
5591 CORA WAY  
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SOUTH JORDAN, UT 84095

L. Dale McAllister  
C/O BEAVER COUNTY JAIL  
2160 SOUTH 600 WEST  
BEAVER, UT 84713

D&R Carpet Care  
C/O WESLEY F. SINE REG AGT  
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SALT LAKE CITY, UT 84111

D&R Funding  
C/O WESLEY F. SINE REG AGT  
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SALT LAKE CITY, UT 84111

Vanguard Group, The  
C/O JODI WHEELER  
14425 SOUTH BITTERBRUSH LANE  
DRAPER, UT 84020

Tradequest International  
C/O JASON VANBEEKUM REG AGT  
160 E 300 S, SECOND FLOOR  
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Sunflower Holdings  
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SALT LAKE CITY, UT 84114

First Financial Mortgage  
C/O JASON VANBEEKUM REG AGT  
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Calvin Paul Stewart  
C/O UTAH COUNTY JAIL  
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SPANISH FORK, UT 84660

Moroni 1901  
UTAH COUNTY JAIL  
C/O CALVIN PAUL STEWART  
3075 NORTH MAIN  
SPANISH FORK, UT

Sunset International  
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2505 W 200 N  
PROVO, UT 84601

ReNae Bolson  
2358 SO MAIN ST  
SALT LAKE CITY, UT 84115

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FEB 16 2005

U.S. DISTRICT COURT

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 A 11:41  
DISTRICT OF UTAH  
D.F.  
DEPUTY CLERK

PAUL M. WARNER, United States Attorney, (#3389)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
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348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	<b>ORDER TOLLING TIME UNDER THE</b>
	:	<b>SPEEDY TRIAL ACT</b>
Plaintiff,	:	
	:	
vs.	:	Case No. 2:04CR000720DB
	:	
MICHAEL NORLANDER,	:	Judge David Nuffer
Defendant.	:	
	:	
	:	

---

The parties appeared before the Court for an Evidentiary Hearing on Defendant's Motion to Suppress on February 8, 2005. At that time the court established a briefing schedule and set a trial date on May 2, 3, and 4, 2005.

THEREFORE IT IS HEREBY ORDERED that the time up to the trial date is tolled under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(1)(F) based upon Defendant's motion to suppress.

40

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this \_\_\_\_\_ day of February, 2005

BY THE COURT:

A handwritten signature in black ink, appearing to read 'D. Nuffer', is written over a horizontal line.

JUDGE DAVID NUFFER  
UNITED STATES DISTRICT COURT

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00720

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lana Taylor, Esq.  
DRUG ENFORCEMENT ADMINISTRATION  
METROPOLITAN NARCOTICS TASK FORCE  
348 E SOUTH TEMPLE  
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Henri R. Sisneros, Esq.  
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Robert Breeze, Esq.  
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US Probation  
DISTRICT OF UTAH  
,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL



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FEB 16 2005

U.S. DISTRICT COURT

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 18 A 9:27

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
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Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	<b>ORDER TOLLING TIME UNDER THE</b>
	:	<b>SPEEDY TRIAL ACT</b>
Plaintiff,	:	
	:	
vs.	:	Case No. 2:04CR00720 <i>DB</i>
	:	
LORI ANN ASAY,	:	Judge David Nuffer
Defendant.	:	
	:	
	:	

---

The parties appeared before the Court for an Evidentiary Hearing on defendant's motion to suppress on February 8, 2005. At that time the court established a briefing scheduling and set a trial date on May 2,3, and 4, 2005.

THEREFORE IT IS HEREBY ORDERED that the time up to the trial date is tolled under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(1)(F) based upon Defendant's motion to suppress.

41

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this 18th day of February, 2005

BY THE COURT:



---

JUDGE DAVID NUFFER  
UNITED STATES DISTRICT COURT

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00720

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lana Taylor, Esq.  
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US Probation  
DISTRICT OF UTAH  
/  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
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FEB 22 2005

U.S. DISTRICT COURT

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 A 10:01

BY: [Signature]

DEPUTY CLERK

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Facsimile: (859) 986-2695

Attorneys for Plaintiffs

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

EARL STEVEN LAND, BRENDA  
MUGLESTON, JEFFERY UTLEY  
Individually and on Behalf of Others  
Similarly Situated

Plaintiffs,

vs.

EG&G Defense Materials, Inc., a division of  
URS Corporation, Inc., a corporation

Defendants.

**ORDER ON DEFENDANT'S  
MOTION TO DISMISS OR  
ALTERNATIVELY STRIKE  
PORTIONS OF PLAINTIFFS'  
COMPLAINT**

**CLASS ACTION**

Case No. 2:04CV004479 DB

Judge: Honorable Dee Benson

This matter came before the Court on February 9, 2005, upon Defendants' Motion to Dismiss or Alternatively Strike Portions of Plaintiffs' Complaint. The Plaintiffs were represented by counsel Sharon Preston, Jesse Brar, and Mick Harrison; and the Defendant was represented by Bryan Benard and Douglas Owens.

26

The Court having fully reviewed Defendants' Motion to Dismiss or Alternatively Strike Portions of Plaintiffs' Complain, Plaintiff's opposing Memorandum, Defendants' Reply, Supplemental Plaintiffs' Response to Defendant's Motion to Dismiss, and heard and considered the oral arguments of counsel; and based thereupon, good cause appearing, it is hereby ORDERED:

1. That Defendants' Motion to Dismiss all of the claims under ERISA (set forth in paragraphs 37 through 53) is GRANTED; and such claims are hereby DISMISSED WITHOUT PREJUDICE.
2. That Defendants' Motion to Strike is hereby GRANTED with regards to the following provisions of Plaintiffs' Complaint, and such provisions are hereby ordered STRICKEN from Plaintiff's Complaint:
  - a. Paragraph 34 of the Plaintiffs' Complaint;
  - b. The word "overtime" from Paragraph 33 of the Plaintiffs' Complaint; and
  - c. The request for attorney's fees with respect to the Second Claim under Utah Code Ann. 34-27-1;
3. That Defendants' Motion to Dismiss the Second Claim under Utah State law (set forth in paragraphs 32 through 35) asserted by the Plaintiffs is DENIED.

DATED this 22 day of February, 2005.

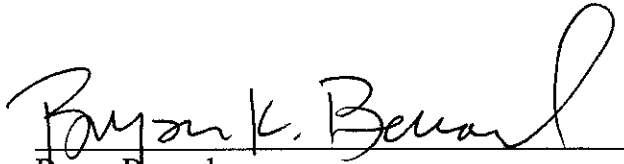
BY THE COURT:



---

Honorable Dee Benson  
United States District Court Judge

APPROVED AS TO FORM AND CONTENT

A handwritten signature in black ink, reading "Bryan K. Benard". The signature is written in a cursive style with a large, looping initial "B".

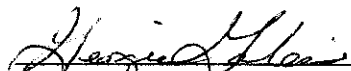
Bryan Benard  
H. Douglas Owens  
HOLLAND & HART, LLP  
Attorneys for Defendant

## CERTIFICATE OF SERVICE

I certify that on this 22<sup>nd</sup> day of February 2005, I served a copy of the foregoing document to the following by:

- ☐ U.S. Mail, Postage Prepaid
- ☒ Hand Delivery
- ☐ Fax

Bryan K. Benard, Esq.  
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60 East South Temple, Suite 2000  
Salt Lake City, UT 84111-1031

  
Georgia Golexis

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00479

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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IN THE UNITED STATES DISTRICT COURT 23 A 9 01  
DISTRICT OF UTAH - CENTRAL DIVISION

HERNANDEZ RAMIREZ CARLOS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BY: DEPUTY CLERK

**ORDER**

Case No. 2:05-CV-00129  
(Related to 2:03-CR-00303)

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. §2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court ORDERS the United States Attorney to respond to the motion within forty-five (45) days of the date of this Order.

DATED this 22 day of February, 2005.



Dee Benson  
United States District Judge

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00129

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Carlos Hernandez-Ramirez  
CCA CALIFORNIA CITY  
#10541-081  
PO BOX 3001-0001  
CALIFORNIA CITY, CA 93504

Mr. Richard N Lambert, Esq.  
US ATTORNEY'S OFFICE

EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

2005 FEB 23 A 10:01

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

WALTER SALVADOR CRUZ LOPEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

Case No. 2:05-CV-00029  
(Related to 2:03-CR-00699)

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. §2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court ORDERS the United States Attorney to respond to the motion within forty-five (45) days of the date of this Order.

DATED this 22 day of February, 2005.



Dee Benson  
United States District Judge

3

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00029

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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Dustin B. Peard, Esq.  
US ATTORNEY'S OFFICE  
/  
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

FILED  
CLERK U.S. DISTRICT COURT  
FEB 23 A 10:01

MIGUEL ANGEL LEIVA,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

**ORDER**

Case No. 2:05-CV-00062  
(Related to 2:04-CR-00238)

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. §2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court ORDERS the United States Attorney to respond to the motion within forty-five (45) days of the date of this Order.

DATED this 22 day of February, 2005.



Dee Benson  
United States District Judge

3

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00062

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Michael P. Kennedy, Esq.  
US ATTORNEY'S OFFICE

,  
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FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 24 A 10:06

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH CHARLES ROGERS,

Defendant.

ORDER DENYING DEFENDANT'S  
SUPPLEMENTAL MOTION TO  
SUPPRESS

Case No. 1:03-CR-27 TS

This matter is before the Court on Defendant's Supplemental Motion to Suppress.<sup>1</sup> The Court, having reviewed the pleadings, the record, and having heard evidence and argument of counsel, will deny Defendant's Supplemental Motion to Suppress, as is set forth more fully below.

---

<sup>1</sup> The Court notes that, while the Court refers to the issues presently before the Court as Defendant's Supplemental Motion to Suppress, Defendant raised them in his original Motion to Suppress. The Court will address the issues as a supplemental filing, given the procedural history of this case.

125

I. PROCEDURAL HISTORY

The Court ruled by written Order granting Defendant's original Motion to Suppress on February 10, 2004. In that Order, the Court found that law enforcement officers had violated Defendant's rights under Miranda, and suppressed the evidence against him. As such, the Court therein expressly declined to reach the merits of Defendant's remaining arguments, including those presently before the Court.

Thereafter, the government pursued an interlocutory appeal of the Court's suppression order. On December 17, 2004, the Tenth Circuit issued a mandate reversing the Court's above-referenced finding, and remanding the case for further proceedings. The Tenth Circuit expressly found that "a reasonable person in Rogers' position would not have believed his freedom of action was restricted to a degree consistent with formal arrest at the time he was asked about the presence and location of firearms in the residence." United States v. Rogers, 391 F.3d 1165, 1172 (10<sup>th</sup> Cir. 2004).

Given the Tenth Circuit's ruling, and the fact that this Court had previously declined to reach the merits of Defendant's remaining arguments, Defendant expressed his intention to persist on those issues. The Court ordered supplemental briefing on the remaining suppression issues; Defendant filed his Supplemental Memorandum in Support of Defendant's Motion to Suppress on February 11, 2005, and the government filed its Reply on February 17, 2005.

II. FINDINGS OF FACT

The facts underlying this Supplemental Motion to Suppress were received on the record at the original evidentiary hearing, and further testimony is not required to resolve the



outstanding issues. Further, the Court found the necessary facts to support its ruling herein in the original Order on Defendant's original Motion to Suppress. As such, the Court need not repeat those findings of fact, but refers to and incorporates them herein.

The Court also refers to and incorporates the findings of fact as set forth in the Tenth Circuit's mandate. See Rogers, supra.

### III. DISCUSSION

As part of this Supplemental Motion to Suppress, Defendant has raised two discreet issues. Defendant argues that 1) the law enforcement officer's statement that Defendant "show me" to the back bedroom constituted an illegal entry and an illegal search; and 2) the possession of the key to the room by law enforcement officers constituted an unlawful seizure. As a result of these contentions, Defendant argues that the evidence seized as a result of the encounter was "fruit of the poisonous tree" and must be suppressed, pursuant to Wong Sun v. United States, 371 U.S. 471 (1963) and Brown v. Illinois, 422 U.S. 590 (1975).

#### A. Illegal entry and search

It is well-established that an exception to the Fourth Amendment's requirement of a warrant is consent. "[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973). It is the government who bears the burden of proving a valid consent to a warrantless search. United States v. Cody, 7 F.3d 1523, 1526 (10<sup>th</sup> Cir. 1993). The search cannot exceed the scope of the invitation. See Lewis v. United States, 385 U.S. 206,

210. Such consent must be unequivocal, specific, freely and intelligently given, and not coerced.

See United States v. Pena, 143 F.3d 1363, 1366 (10<sup>th</sup> Cir. 1998).

In its February 10, 2004, Order, the Court expressly found that “the law enforcement officers’ initial entry into the threshold of the residence was authorized by the consent of Defendant. Therefore, the Fourth Amendment is not implicated in this respect.” Order at 7. This determination by the Court was not disturbed by the Tenth Circuit’s December 17, 2004, Mandate, and no cause has been shown that would alter this ruling. Therefore, it is still the ruling of this Court.

Turning to the encounter from the time after the initial entry into the home, up to and including the duration of the law enforcement officers’ presence in the home, the Court further finds that the encounter was consensual.

In making this determination, the Court is guided by the test of reasonableness from the standpoint of the ordinary person. Indeed, “the touchstone of the Fourth Amendment is reasonableness,” which is viewed with respect to the totality of the circumstances. Ohio v. Robinette, 519 U.S. 33, 39 (1996). Whether a defendant voluntarily consented to a request to search is a question of fact to be determined based on the totality of the circumstances. Schneekloth, 412 U.S. at 248-49.

The Court’s previous finding that the initial entry into Defendant’s home was consensual extends to the remaining encounter. This Court previously found that the interaction between Defendant and law enforcement officers was “cordial,” and that the officers never raised their voices or exhibited any intimidating behavior – a factor specifically cited by the Tenth Circuit in

its December 17, 2004, mandate. See also Rogers, supra.<sup>2</sup> The record bears out that the law enforcement officers were professional and respectful in their demeanor, they did not display or threaten the use of firearms, did not raise their voices or touch or otherwise physically restrain Defendant, and the time of day during which the encounter took place was not unreasonable.

Based upon the totality of the circumstances present in this case, the Court finds that a reasonable person would consider that Defendant voluntarily consented to the “search” that occurred during the encounter, and that consent was unequivocal, specific, freely and intelligently given, and not coerced. Therefore, Defendant’s Fourth Amendment rights were not violated in this respect.

B. Seizure

The Court will next address Defendant’s contention that Officer Litster’s request for the key to the back bedroom, locking of the door, and retention of the key constitutes an illegal

---

<sup>2</sup> Further, although the Tenth Circuit was discussing the facts of this case in terms of analysis of a potential Miranda violation, its findings are also helpful to the instant analysis: “A consideration of the totality of the circumstances surrounding Officer Litster’s questions to Rogers about the presence of weapons in the home and the location of those weapons demonstrates that no reasonable person in Rogers’ situation would have felt that his freedom of action was restrained to a degree associated with formal arrest;” “This court can find nothing in this sequence of events that would lead an ordinary person to believe he was under arrest at the time Officer Litster asked the questions about the presence and location of weapons;” “No reasonable person in Rogers position would have felt that his freedom of action was limited to a degree associated with formal arrest at the time Officer Litster asked about the presence and location of any weapons in the home;” and, finally, “[T]his court concludes that a reasonable person in Rogers’ position would not have believed his freedom of action was restricted to a degree consistent with formal arrest at the time he was asked about the presence and location of firearms in the residence.”

seizure of the items in the back bedroom. Defendant's argument appears to hinge on the following testimony of Officer Litster at the evidentiary hearing:

Defense counsel:     Would it be safe to say that you took the  
                                  key, albeit on a temporary basis, you seized  
                                  all the items that were contained in that back  
                                  bedroom?

Officer Litster:        I had control over those items, yes.

A property seizure only occurs when a law enforcement officer *meaningfully interferes* with an individual's possessory interest. United States v. Jackson, 466 U.S. 109, 113 (1984). The evidence before the Court is that the law enforcement officers in this case did nothing more than look at the firearms and lock them, untouched, in a room for a relatively short period of time. The firearms at issue had been sitting in the back bedroom and were not in Defendant's direct possession, the officers did not search the gun cases or the back room, and never took possession of, or even touched the firearms. Such actions do not amount to a deprivation.

The Court finds that the actions of law enforcement officers here did not meaningfully interfere with Defendant's possessory interest in the firearms. Therefore, there was no seizure for Fourth Amendment purposes.

IV. CONCLUSION

Based upon the above, it is hereby

ORDERED that Defendant's Supplemental Motion to Suppress is DENIED. It is further

ORDERED that the trial currently set for March 1, 2005, remains in effect.

SO ORDERED.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:03-cr-00027

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

Michael J. Boyle, Esq.  
BOYLE & DRAGE  
2554 S MONROE BLVD  
OGDEN, UT 84401  
JFAX 8,801,3944923

Ms. Barbara Bearnson, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

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FEB 23 2005  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

In re NOVELL, INC. SECURITIES  
LITIGATION

This Document Relates To:

ALL ACTIONS.

) Case No. 2:99-CV-995 TC

) CLASS ACTION

) Judge Tena Campbell  
) Magistrate Judge David Nuffer

) ~~ORDER~~ ORDER PRELIMINARILY  
) APPROVING SETTLEMENT AND  
) PROVIDING FOR NOTICE

211

WHEREAS, a consolidated class action is pending before the Court entitled *In re Novell, Inc. Securities Litigation*, Case No. 2:99-CV-995 TC (the "Litigation");

WHEREAS, the Court has received the Stipulation of Settlement dated as of September 30, 2004 (the "Stipulation"), that has been entered into by the Lead Plaintiffs and Defendants, and the Court has reviewed the Stipulation and its attached Exhibits;

WHEREAS, the parties having made application, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the settlement of this Litigation, in accordance with the Stipulation which, together with the Exhibits annexed thereto sets forth the terms and conditions for a proposed settlement of the Litigation and for dismissal of the Litigation with prejudice against the Defendants upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, all defined terms contained herein shall have the same meanings as set forth in the Stipulation;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court does hereby preliminarily approve the Stipulation and the settlement set forth therein, subject to further consideration at the Settlement Hearing described below.
2. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court hereby certifies, for purposes of effectuating this settlement, a class consisting of all Persons who purchased Novell, Inc. ("Novell") stock during the period from November 1, 1996 to April 22, 1997, inclusive (the "Settlement Class"). Excluded from the Settlement Class are the Defendants, members of the immediate families of the Individual Defendants, any entity in which any Defendant has or had a controlling interest, directors and officers of Novell, and the legal representatives, heirs, successors, or assigns of any such excluded Person or entity. Also excluded from the Settlement Class are those



Persons who submit a valid and timely request to be excluded from the Settlement Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action attached as Exhibit A-1 hereto. Neither any Defendant named in any complaint in the Litigation, nor any of Defendants' Related Parties shall be entitled to submit a Proof of Claim form as a Settlement Class Member.

3. With respect to the Settlement Class, this Court finds and concludes that: (a) the members of the class are so numerous that joinder of all members in the Litigation is impracticable; (b) there are questions of law and fact common to the class which predominate over any individual questions; (c) the claims of the Lead Plaintiffs are typical of the claims of the class; (d) the Lead Plaintiffs and Lead Counsel have fairly and adequately represented and protected the interests of all of the class members; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy, considering: (i) the interests of the members of the class in individually controlling the prosecution of the separate actions, (ii) the extent and nature of any litigation concerning the controversy already commenced by members of the class, (iii) the desirability or undesirability of continuing the litigation of the claims in the particular forum, and (iv) the difficulties likely to be encountered in the management of the class action.

4. A hearing (the "Settlement Hearing") shall be held before this Court on May 26, 2005, at 3:00 p.m., at the Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah , to determine whether the proposed settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable and adequate to the Settlement Class and should be approved by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure; whether a Judgment as provided in ¶1.9 of the Stipulation should be entered herein; whether the proposed Plan of Allocation should be approved; and to determine the amount of fees and expenses that should be

awarded to Lead Plaintiffs' counsel. The Court may adjourn the Settlement Hearing without further notice to Members of the Settlement Class.

5. The Court approves, as to form and content, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), the Proof of Claim and Release form (the "Proof of Claim"), and Summary Notice for publication annexed as Exhibits A-1, A-2 and A-3 hereto, and finds that the mailing and distribution of the Notice and publishing of the Summary Notice substantially in the manner and form set forth in ¶¶6-7 of this Order meet the requirements of Federal Rule of Civil Procedure 23 and due process, and is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

6. The Court hereby appoints Gilardi & Co. LLC ("Claims Administrator") to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

(a) Plaintiffs' Settlement Counsel shall make reasonable efforts to identify all Persons who are Members of the Settlement Class, and not later than March 9, 2005 (the "Notice Date"), Plaintiffs' Settlement Counsel shall cause a copy of the Notice and the Proof of Claim, substantially in the forms annexed as Exhibits A-1 and A-2 hereto, to be mailed by first class mail to all Settlement Class Members who can be identified with reasonable effort;

(b) Plaintiffs' Settlement Counsel shall cause the Summary Notice to be published twice in *Investor's Business Daily*, once on or before March 18, 2005 and once on or before March 25, 2005; and

(c) At least seven (7) calendar days prior to the Settlement Hearing, Plaintiffs' Settlement Counsel shall cause to be served on Defendants' counsel and filed with the Court proof, by affidavit or declaration, of such mailing and publishing.

7. Nominees who purchased the stock of Novell during the period beginning November 1, 1996 through April 22, 1997, inclusive, shall send the Notice and the Proof of Claim to all beneficial owners of such Novell stock within ten (10) days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners. Plaintiffs' Settlement Counsel shall, if requested, reimburse banks, brokerage houses or other nominees solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners who are Settlement Class Members out of the Settlement Fund, which expenses would not have been incurred except for the sending of such notice, subject to further order of this Court with respect to any dispute concerning such compensation.

8. All Members of the Settlement Class shall be bound by all determinations and judgments in the Litigation concerning the settlement, whether favorable or unfavorable to the Settlement Class.

9. Any Person falling within the definition of the Settlement Class may, upon request, be excluded from the Settlement Class. Any such Person must submit to the Claims Administrator a request for exclusion ("Request for Exclusion"), postmarked no later than April 25, 2005. A Request for Exclusion must state: (1) the name, address, and telephone number of the Person requesting exclusion; (2) the Person's purchases and sales of Novell stock made during the Class Period, including the dates, the number of shares, and price paid or received per share for each such purchase or sale; and (3) that the Person wishes to be excluded from the Settlement Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the Stipulation, shall not share in the distribution of the Settlement Fund, and shall not be bound by the Stipulation or the Final Judgment.

10. Settlement Class Members who wish to participate in the settlement shall complete and submit Proof of Claim forms in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proof of Claim forms must be submitted no later than ninety (90) days from the Notice Date. Any Settlement Class Member who does not timely submit a Proof of Claim within the time provided for, shall be barred from sharing in the distribution of the proceeds of the Settlement Fund, unless otherwise ordered by the Court.

11. Any Member of the Settlement Class may enter an appearance in the Litigation, at their own expense, individually or through counsel of their own choice. If they do not enter an appearance, they will be represented by Plaintiffs' Settlement Counsel.

12. Any Member of the Settlement Class may appear and show cause, if he, she or it has any, why the proposed settlement of the Litigation should or should not be approved as fair, reasonable and adequate, why a judgment should or should not be entered thereon, why the Plan of Allocation should or should not be approved, or why attorneys' fees and expenses should or should not be awarded to counsel for the Lead Plaintiffs; provided, however, that no Settlement Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or the attorneys' fees and expenses to be awarded to counsel for the Lead Plaintiffs, unless that Person has delivered by hand or sent by first class mail written objections and copies of any papers and briefs such that they are received on or before April 25, 2005, by Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Jeffrey D. Light, 401 B Street, Suite 1600, San Diego, California 92101, Kaplan Fox & Kilsheimer LLP, Laurence D. King, 555 Montgomery Street, Suite 1501, San Francisco, California 94111, and Wilson Sonsini Goodrich & Rosati, P.C., Terry T. Johnson, 650 Page Mill Road, Palo Alto, California 94304, and

filed said objections, papers and briefs with the Clerk of the United States District Court for the District of Utah, Central Division, on or before April 25, 2005. Any Member of the Settlement Class who does not make his, her or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award of attorneys' fees and expenses to counsel for the Lead Plaintiffs, unless otherwise ordered by the Court.

13. All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

14. All papers in support of the settlement, the Plan of Allocation, and any application by counsel for the Lead Plaintiffs for attorneys' fees or reimbursement of expenses shall be filed and served seven (7) calendar days before the Settlement Hearing.

15. Neither Defendants and their Related Parties nor Defendants' counsel shall have any responsibility for the Plan of Allocation or any application for attorneys' fees or reimbursement of expenses submitted by Lead Plaintiffs' counsel, and such matters will be considered separately from the fairness, reasonableness and adequacy of the settlement.

16. At or after the Settlement Hearing, the Court shall determine whether the Plan of Allocation proposed by Plaintiffs' Settlement Counsel, and any application for attorneys' fees or reimbursement of expenses shall be approved.

17. All reasonable expenses incurred in identifying and notifying Settlement Class Members, as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation. In the event the settlement is not approved by the Court, or otherwise fails to become effective,

neither the Lead Plaintiffs nor any of their counsel shall have any obligation to repay any amounts actually and properly disbursed from the Class Notice and Administration Fund.

18. Pending final determination of whether the settlement should be approved, neither the Lead Plaintiffs nor any Settlement Class Member, either directly, representatively, or in any other capacity, shall commence or prosecute against any of the Released Persons, any action or proceeding in any court or tribunal asserting any of the Released Claims.

19. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind.

20. In the event that the Stipulation is not approved by the Court or the settlement set forth in the Stipulation is terminated or fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of September 29, 2004.


21. The Court reserves the right to adjourn the date of the Settlement Hearing without further notice to the Members of the Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed settlement. The Court may approve the settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Settlement Class.

DATED: 2-24-2005

  
\_\_\_\_\_  
THE HONORABLE TENA CAMPBELL  
UNITED STATES DISTRICT JUDGE

Submitted by:

BURBIDGE & MITCHELL  
RICHARD D. BURBIDGE, #0492  
STEPHEN B. MITCHELL, #2278  
JEFFERSON W. GROSS, #8339




RICHARD D. BURBIDGE

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Co-Lead Counsel for Plaintiffs

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DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Salt Lake, over the age of 18 years, and not a party to or interest in the within action; that declarant's business address is 215 South State, Suite 920, Salt Lake City, Utah 84111.

2. That on February 23, 2005, declarant served the [PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT AND PROVIDING FOR NOTICE by depositing a true copy thereof in a United States mailbox at Salt Lake City, Utah in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of February, 2005, at Salt Lake City, Utah.

  
\_\_\_\_\_  
JANIS SEARS

**NOVELL III (SETTLEMENT)**

**Service List - 2/23/2005 (98-050S)**

**Page 1 of 2**

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**NOVELL III (SETTLEMENT)**

**Service List - 2/23/2005 (98-0506)**

**Page 2 of 2**

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**100 Pine Street, Suite 2600**

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**415/288-4545**

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EXHIBIT A-1

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Co-Lead Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

In re NOVELL, INC. SECURITIES  
LITIGATION

This Document Relates To:

ALL ACTIONS.

) Case No. 2:99-CV-995 TC

) CLASS ACTION

) Judge Tena Campbell  
) Magistrate Judge David Nuffer

) NOTICE OF PENDENCY AND PROPOSED  
) SETTLEMENT OF CLASS ACTION

EXHIBIT A-1

TO: ALL PERSONS WHO PURCHASED NOVELL, INC. ("NOVELL") STOCK DURING THE PERIOD BEGINNING NOVEMBER 1, 1996 THROUGH APRIL 22, 1997, INCLUSIVE

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM POSTMARKED ON OR BEFORE \_\_\_\_\_, 2005.

This Notice has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Utah, Central Division (the "Court"). The purpose of this Notice is to inform you of the pendency and proposed settlement of this class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement. This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted. This Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and this class action litigation.

The proposed settlement creates a fund in the amount of \$13,900,000 in cash ("Settlement Fund") and will include interest that accrues on the Settlement Fund prior to distribution. Your recovery from this fund will depend on a number of variables, including the number of shares of Novell stock you purchased during the period November 1, 1996 to April 27, 1997, and the timing of your purchases and any sales. Depending on the number of eligible shares purchased by Settlement Class Members who elect to participate in the settlement and when those shares were purchased and

sold, the estimated average recovery per share will be approximately \$0.15 before deduction of Court-approved fees and expenses.

Lead Plaintiffs and Defendants do not agree on the average amount of damages per share that would be recoverable if the Lead Plaintiffs were to have prevailed on each claim alleged. The issues on which the parties disagree include: (1) the appropriate economic model for determining the amount by which Novell stock was allegedly artificially inflated (if at all) during the Settlement Class Period; (2) the amount by which Novell stock was allegedly artificially inflated (if at all) during the Settlement Class Period; (3) the effect of various market forces influencing the trading price of Novell stock at various times during the Settlement Class Period; (4) the extent to which external factors, such as general market and industry conditions, influenced the trading price of Novell stock at various times during the Settlement Class Period; (5) the extent to which the various matters that Lead Plaintiffs alleged were materially false or misleading influenced (if at all) the trading price of Novell stock at various times during the Settlement Class Period; (6) the extent to which the various allegedly adverse material facts that Lead Plaintiffs alleged were omitted influenced (if at all) the trading price of Novell stock at various times during the Settlement Class Period; and (7) whether the statements made or facts allegedly omitted were material, false, misleading or otherwise actionable under the securities laws.

The Lead Plaintiffs believe that the proposed settlement is a good recovery and is in the best interests of the Settlement Class. Because of the risks associated with continuing to litigate and proceeding to trial, there was a danger that Lead Plaintiffs would not have prevailed on any of their claims, in which case the Settlement Class would receive nothing. The amount of damages recoverable by the Settlement Class was and is challenged by Defendants. Recoverable damages in this case are limited to losses caused by conduct actionable under applicable law and, had the

Litigation gone to trial, Defendants would have asserted that all or most of the losses of Settlement Class Members were caused by non-actionable market, industry or general economic factors. Defendants would also assert that throughout the Settlement Class Period the uncertainties and risks associated with the purchase of Novell stock were fully and adequately disclosed.

Lead Plaintiffs' counsel have not received any payment for their services in conducting this Litigation on behalf of the Lead Plaintiffs and the Members of the Settlement Class, nor have they been reimbursed for their out-of-pocket expenditures. If the settlement is approved by the Court, counsel for the Lead Plaintiffs will apply to the Court for attorneys' fees of 30% of the Settlement Fund, and reimbursement of out-of-pocket expenses not to exceed \$960,000, to be paid from the Settlement Fund. If the amount requested is approved by the Court, the average cost per share will be \$0.05.

For further information regarding this settlement you may contact: Rick Nelson, Lerach Coughlin Stoia Geller Rudman & Robbins LLP, 401 B Street, Suite 1600, San Diego, California 92101, Telephone: 800/449-4900.

#### **I. NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A settlement hearing will be held on \_\_\_\_\_, 2005, at \_\_\_\_\_ p.m., before the Honorable Tena Campbell, United States District Judge, District of Utah, Central Division, at the Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah (the "Settlement Hearing"). The purpose of the Settlement Hearing will be to determine: (1) whether the settlement should be approved as fair, reasonable and adequate to the Settlement Class; (2) whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation") is fair, reasonable, and adequate; (3) whether the application by Lead Plaintiffs' counsel for an award of attorneys' fees and expenses should be approved; and (4) whether the Litigation should be dismissed with prejudice.



The Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

## **II. DEFINITIONS USED IN THIS NOTICE**

1. "Individual Defendants" means John A. Young, Joseph A. Marengi and James R. Tolonen.

2. "Lead Plaintiffs" means Domenico Pirraglia, Bella and Bernard Pasternak, Mohamad S. Bakizada, Henriette Bakizada, Michael C. Dodge, Peter Cole on behalf of Regulus Capital Corporation, Antonio Tripodi and Gary M. Goodman.

3. "Related Parties" means each of a Defendant's past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers, outside auditors and accountants, controlling shareholders, attorneys, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of an Individual Defendant's immediate family, or any trust of which any Individual Defendant is the settlor or which is for the benefit of an Individual Defendant's family.

4. "Released Claims" shall collectively mean all claims (including "Unknown Claims" as defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, asserted or that might have been asserted, including, without limitation, claims for negligence, gross negligence, breach of duty of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, or violations of any state or federal statutes, rules or regulations, by any Lead Plaintiff or Settlement Class Member against the Released Persons arising out of, based upon or related to both the purchase of Novell stock by any Lead Plaintiff or any Settlement Class Member during the Settlement Class Period and the

allegations, facts, transactions, events, occurrences, acts, disclosures, representations, statements, omissions, or failures to act which were or could have been alleged in the Litigation. Released Claims also includes any and all claims arising out of, relating to, or in connection with the settlement or resolution of the Litigation between the Settling Parties.

5. "Released Persons" means each and all of the Defendants and their Related Parties.

6. "Settlement Class" means all Persons who purchased Novell stock during the period from November 1, 1996 to April 22, 1997, inclusive. Excluded from the Settlement Class are the Defendants, members of the immediate families of the Individual Defendants, any entity in which any Defendant has or had a controlling interest, directors and officers of Novell, and the legal representatives, heirs, successors, or assigns of any such excluded Person or entity. Also excluded from the Settlement Class are those Persons who submit a valid and timely request to be excluded from the Settlement Class pursuant to this Notice.

7. "Settlement Class Period" means the period from November 1, 1996 through April 22, 1997, inclusive.

8. "Settling Parties" means, collectively, each of the Defendants and the Lead Plaintiffs on behalf of themselves and the Members of the Settlement Class.

9. "Unknown Claims" means any Released Claims which any Lead Plaintiff or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiffs shall expressly and each of the

Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

The Lead Plaintiffs shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. The Lead Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each Lead Plaintiff shall expressly and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims against the Released Persons, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Lead Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

### III. THE LITIGATION

On and after February 26, 1998, the following actions were filed in the United States District Court, Northern District of California, San Jose Division, as securities class actions on behalf of purchasers of Novell, Inc. stock during a defined period of time:

- (a) *Pirraglia v. Novell, Inc., et al.*, No. C-98-20249-JF; and
- (b) *Pasternak, et al. v. Novell, Inc., et al.*, Case No. C-98-20529-JF.

These actions were consolidated for all purposes by an Order filed July 17, 1998. The consolidated actions are referred to herein collectively as the "Litigation." By Order filed July 17, 1998, Domenico Pirraglia, Bella and Bernard Pasternak, Mohamad S. Bakizada, Henriette Bakizada, Michael C. Dodge, Peter Cole on behalf of Regulus Capital Corporation, Antonio Tripodi and Gary M. Goodman were appointed Lead Plaintiffs and their choice of Lead Counsel was approved.

On December 6, 1999, the court granted Defendants' motion to transfer the Litigation to the United States District Court, District of Utah.

On March 13, 2000, Lead Plaintiffs filed the Amended and Consolidated Complaint for Violation of the Securities Exchange Act of 1934 ("AC"). Thereafter, on April 21, 2000, Defendants filed a motion to dismiss the AC. On November 3, 2000, the Court filed an order dismissing the AC without prejudice. As part of the Lead Plaintiffs' motion to amend the AC, Lead Plaintiffs filed Plaintiffs' Proposed Second Amended and Consolidated Complaint Filed in Support of Motion for Leave to Amend. On February 20, 2001, Lead Plaintiffs' Second Amended Complaint was deemed filed (the "Complaint"). On April 17, 2002, the Court entered an order and judgment dismissing the Complaint. Subsequently, Lead Plaintiffs' filed a notice of appeal. After briefing, the Tenth Circuit Court of Appeals issued a decision which affirmed in part and reversed in part the Court's order dismissing the Complaint. See *Pirraglia v. Novell*, 339 F.3d 1182 (10th Cir. 2003).

The Complaint alleges violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder on behalf of a class of purchasers of Novell stock during the period from November 1, 1996 to April 22, 1997. The defendants are Novell, John A. Young, Joseph A. Marengi and James R. Tolonen.

#### **IV. CLAIMS OF THE LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT**

The Lead Plaintiffs believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports the claims. However, the Lead Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Defendants through trial and through appeals. The Lead Plaintiffs and their counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. The Lead Plaintiffs and their counsel also are mindful of the inherent problems of proof under and possible defenses to the securities law violations asserted in the Litigation. The Lead Plaintiffs and their counsel believe that the settlement set forth in the Stipulation confers substantial benefits upon the Settlement Class. Based on their evaluation, the Lead Plaintiffs and their counsel have determined that the settlement set forth in the Stipulation is in the best interests of the Lead Plaintiffs and the Settlement Class.

#### **V. DEFENDANTS' STATEMENT AND DENIALS OF WRONGDOING AND LIABILITY**

The Defendants have denied and continue to deny each and all of the claims and contentions alleged by the Lead Plaintiffs in the Litigation. The Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the Litigation. The

Defendants also have denied and continue to deny, *inter alia*, the allegations that the Lead Plaintiffs or the Settlement Class have suffered damage, that the price of Novell stock was artificially inflated by reasons of alleged misrepresentations, non-disclosures or otherwise, or that the Lead Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Complaint.

Nonetheless, the Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in the Stipulation. The Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation. The Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in the Stipulation.

## **VI. TERMS OF THE PROPOSED SETTLEMENT**

The Defendants and their insurance carriers have paid or caused to be paid, or will pay, into an escrow account, pursuant to the terms of the Stipulation of Settlement dated as of September 30, 2004 (the "Stipulation"), cash in the amount of \$13.9 million which will earn interest for the benefit of the Settlement Class.

A portion of the settlement proceeds will be used for certain administrative expenses, including costs of printing and mailing this Notice, the cost of publishing a newspaper notice, payment of any taxes assessed against the Settlement Fund and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to counsel for Lead Plaintiffs as attorneys' fees and for reimbursement of out-of-pocket expenses. The balance of the Settlement Fund (the "Net Settlement Fund") will be

distributed according to the Plan of Allocation described below to Settlement Class Members who submit valid and timely Proof of Claim forms.

#### **VII. ORDER CERTIFYING A CLASS FOR PURPOSES OF SETTLEMENT**

On \_\_\_\_\_, 2005, the Court certified a class for purposes of this settlement only.

The Settlement Class is defined above.

#### **VIII. THE RIGHTS OF SETTLEMENT CLASS MEMBERS**

If you are a Settlement Class Member, you may receive the benefit of, and you will be bound by, the terms of the proposed settlement described in Section VI of this Notice, upon approval of it by the Court.

If you are a Settlement Class Member, you have the following options:

1. You may file a Proof of Claim as described below. If you choose this option, you will remain a Settlement Class Member, you will share in the proceeds of the proposed settlement if your claim is timely and valid and if the proposed settlement is finally approved by the Court, and you will be bound by the Judgment and release described below.

2. If you do not wish to be included in the Settlement Class and you do not wish to participate in the proposed settlement described in this Notice, you may request to be excluded. To do so, you must so state in writing no later than \_\_\_\_\_, 2005. You must set forth: (a) your name, address and telephone number; (b) the number of shares of Novell stock you purchased during the Settlement Class Period and the dates and prices of such purchase(s) and/or any sale(s); and (c) that you wish to be excluded from the Settlement Class. The exclusion request should be addressed as follows:

*Novell Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

NO REQUEST FOR EXCLUSION WILL BE CONSIDERED VALID UNLESS ALL OF THE INFORMATION DESCRIBED ABOVE IS INCLUDED IN ANY SUCH REQUEST. If you validly request exclusion from the Settlement Class, (a) you will be excluded from the Settlement Class, (b) you will not share in the proceeds of the settlement described herein, (c) you will not be bound by any judgment entered in the Litigation, and (d) you will not be precluded, by reason of your decision to request exclusion from the Settlement Class, from otherwise prosecuting an individual claim, if timely, against Defendants based on the matters complained of in the Litigation.

3. If you do not request in writing to be excluded from the Settlement Class as set forth in paragraph 2 above, you will be bound by any and all determinations or judgments in the Litigation in connection with the settlement entered into or approved by the Court, whether favorable or unfavorable to the Settlement Class, and you shall be deemed to have, and by operation of the Judgment shall have, fully released all of the Released Claims against the Released Persons, whether or not you submit a valid Proof of Claim form.

4. You may object to the settlement and/or the application of plaintiffs' counsel for an award of attorneys' fees and reimbursement of expenses in the manner set forth below. The filing of a Proof of Claim by a Settlement Class Member does not preclude a Settlement Class Member from objecting to the settlement. However, if your objection is rejected you will be bound by the settlement and the Judgment just as if you had not objected.

5. You may do nothing at all. If you choose this option, you will not share in the proceeds of the settlement, but you will be bound by any judgment entered by the Court, and you



shall be deemed to have, and by operation of the Judgment shall have fully released all of the Released Claims against the Released Persons.

If you are a Settlement Class Member, you may, but are not required to, enter an appearance through counsel of your own choosing at your own expense. If you do not do so, you will be represented by Plaintiffs' Settlement Counsel: Lerach Coughlin Stoia Geller Rudman & Robbins LLP, Jeffrey D. Light, 401 B Street, Suite 1600, San Diego, California 92101 and Kaplan Fox & Kilsheimer LLP, Laurence D. King, 555 Montgomery Street, Suite 1501, San Francisco, California 94111.

#### **IX. PLAN OF ALLOCATION**

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely Proof of Claim forms ("Authorized Claimants") under the Plan of Allocation described below. The Plan of Allocation provides that you will be eligible to participate in the distribution of the Net Settlement Fund only if you have a net loss on all transactions in Novell stock during the Settlement Class Period.

For purposes of determining the amount an Authorized Claimant may recover under the Plan of Allocation, Lead Plaintiffs' counsel have consulted with their damage consultants and the Plan of Allocation reflects an assessment of the damages that they believe could have been recovered had plaintiffs prevailed at trial on all material issues.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's claim, as defined below. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all

Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

A claim will be calculated as follows:

1. For shares of Novell, Inc. stock that were *purchased from November 1, 1996 through February 26, 1997*, and
  - a) sold prior to February 27, 1997, the claim per share is \$0;
  - b) sold from February 27, 1997 – April 22, 1997, the claim per share is the lesser of: (i) \$2.25 per share, or (ii) the purchase price less the sales price;
  - c) retained at the end of April 22, 1997, the claim per share is the lesser of: (i) \$3.97, or (ii) the purchase price less \$7.31 (April 23, 1997 closing price).
2. For shares of Novell stock that were *purchased from February 27, 1997 through April 22, 1997*, and
  - a) sold prior to April 23, 1997, the claim per share is \$0;
  - b) retained at the end of April 22, 1997, the claim per share is the lesser of: (i) \$1.72, or (ii) the purchase price less \$7.31 (April 23, 1997 closing price).

For Settlement Class Members who held shares at the beginning of the Settlement Class Period or made multiple purchases or sales during the Settlement Class Period, the first-in, first-out ("FIFO") method will be applied to such holdings, purchases and sales for purposes of calculating a claim. Under the FIFO method, sales of shares during the Settlement Class Period will be matched, in chronological order, first against shares held at the beginning of the Settlement Class Period. The remaining sales of shares during the Settlement Class Period will then be matched, in chronological order, against shares purchased during the Settlement Class Period.

A Settlement Class Member will be eligible to receive a distribution from the Net Settlement Fund only if a Settlement Class Member had a net loss, after all profits from transactions in Novell stock during the Settlement Class Period are subtracted from all losses. However, the proceeds from

sales of stock which have been matched against stock held at the beginning of the Settlement Class Period will not be used in the calculation of such net loss.

The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Settlement Class Member on equitable grounds.

Payment pursuant to the Plan of Allocation set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Plaintiffs' Settlement Counsel, Plaintiffs' Counsel or any claims administrator or Defendants, Defendants' Related Parties, or Defendants' counsel based on distributions made substantially in accordance with the Stipulation and the settlement contained therein, the Plan of Allocation, or further orders of the Court. All Settlement Class Members who fail to complete and file a valid and timely Proof of Claim and Release shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

#### **X. PARTICIPATION IN THE SETTLEMENT**

If you fall within the definition of the Settlement Class, you will be bound by any judgment entered with respect to the settlement in the Litigation, whether or not you file a Proof of Claim and Release form. If you choose, you may enter an appearance individually or through your own counsel at your own expense.

**TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE.** The Proof of Claim and Release must be postmarked on or before \_\_\_\_\_, 2005, and delivered to the Claims Administrator at the address below. Unless the Court orders otherwise, if you do not timely submit a valid Proof of

Claim and Release, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Stipulation and the Judgment.

#### **XI. DISMISSAL AND RELEASES**

If the proposed settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice ("Judgment"). The Judgment will dismiss the Released Claims with prejudice as to all Defendants. The Judgment will provide that all Settlement Class Members shall be deemed to have released and forever discharged all Released Claims (to the extent Members of the Settlement Class have such claims) against all Released Persons and that the Released Persons shall be deemed to have released and discharged all Settlement Class Members and counsel to the Lead Plaintiffs from all claims arising out of the prosecution and settlement of the Litigation or the Released Claims.

#### **XII. APPLICATION FOR FEES, EXPENSES AND AWARDS**

At the Settlement Hearing, counsel for the Lead Plaintiffs will request the Court to award attorneys' fees of 30% of the Settlement Fund, plus reimbursement of the expenses, not to exceed \$960,000, which were advanced in connection with the Litigation, plus interest thereon. Such sums as may be approved by the Court will be paid from the Settlement Fund. The Lead Plaintiffs may seek reimbursement of their expenses incurred in representing the Settlement Class in the Litigation in an amount not to exceed \$25,000 each. Settlement Class Members are not personally liable for any such fees or expenses.

To date, Lead Plaintiffs' counsel have not received any payment for their services in conducting this Litigation on behalf of Lead Plaintiffs and the Members of the Settlement Class, nor have counsel been reimbursed for their substantial out-of-pocket expenses. The fee requested by Lead Plaintiffs' counsel will compensate counsel for their efforts in achieving the Settlement Fund

for the benefit of the Settlement Class, and for their risk in undertaking this representation on a wholly contingent basis. The fee requested is well within the range of fees awarded to plaintiffs' counsel under similar circumstances in other litigation of this type.

### **XIII. CONDITIONS FOR SETTLEMENT**

The settlement is conditioned upon the occurrence of certain events described in the Stipulation. Those events include, among other things: (1) entry of the Judgment by the Court, as provided for in the Stipulation; and (2) expiration of the time to appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Stipulation is not met, the Stipulation might be terminated and, if terminated, will become null and void, and the parties to the Stipulation will be restored to their respective positions as of September 29, 2004.

### **XIV. THE RIGHT TO BE HEARD AT THE HEARING**

Any Settlement Class Member who objects to any aspect of the settlement, the Plan of Allocation, or the application for attorneys' fees, costs and expenses, may appear and be heard at the Settlement Hearing. Any such person must submit a written notice of objection, received on or before \_\_\_\_\_, 2005, by each of the following:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION  
FRANK E. MOSS U.S. COURTHOUSE  
350 South Main Street, Room 150  
Salt Lake City, UT 84101

*Lead Counsel for Plaintiffs:*

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
401 B Street, Suite 1600  
San Diego, CA 92101

KAPLAN FOX & KILSHEIMER LLP  
LAURENCE D. KING  
555 Montgomery Street, Suite 1501  
San Francisco, CA 94111

*Counsel for Defendants:*

WILSON, SONSINI, GOODRICH &  
ROSATI, P.C.  
TERRY T. JOHNSON  
DANIEL W. TURBOW  
KENT W. EASTER  
650 Page Mill Road  
Palo Alto, CA 94304-1050

The notice of objection must demonstrate the objecting Person's membership in the Settlement Class, including the number of shares of Novell stock purchased and sold during the Settlement Class Period, and contain a statement of the reasons for objection. Only Members of the Settlement Class who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise.

#### **XV. SPECIAL NOTICE TO NOMINEES**

If you hold any Novell stock purchased during the Settlement Class Period as nominee for a beneficial owner, then, within ten (10) days after you receive this Notice, you must either: (1) send a copy of this Notice and the Proof of Claim by first class mail to all such Persons; or (2) provide a list of the names and addresses of such Persons to the Claims Administrator:

*Novell Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

If you choose to mail the Notice and Proof of Claim yourself, you may obtain from the Claims Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing.

Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and Proof of Claim and which would not have been incurred but for the obligation to forward the Notice and Proof of Claim, upon submission of appropriate documentation to the Claims Administrator.

#### **XVI. EXAMINATION OF PAPERS**

This Notice is a summary and does not describe all of the details of the Stipulation. For full details of the matters discussed in this Notice, you may review the Stipulation filed with the Court, which may be inspected during business hours, at the office of the Clerk of the Court, United States Courthouse, District of Utah, Central Division, Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah.

If you have any questions about the settlement of the Litigation, you may contact Plaintiffs' Settlement Counsel by writing:

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
401 B Street, Suite 1600  
San Diego, CA 92101

KAPLAN FOX & KILSHEIMER LLP  
LAURENCE D. KING  
555 Montgomery Street, Suite 1501  
San Francisco, CA 94111

**DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.**

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

EXHIBIT A-2



BURBIDGE & MITCHELL  
RICHARD D. BURBIDGE, #0492  
STEPHEN B. MITCHELL, #2278  
JEFFERSON W. GROSS, #8339  
J. RYAN MITCHELL, #9362  
215 South State Street, Suite 920  
Salt Lake City, UT 84111-2311  
Telephone: 801/355-6677

Local Counsel

LERACH COUGHLIN STOIA GELLER  
RUDMAN & ROBBINS LLP

WILLIAM S. LERACH  
HENRY ROSEN  
JEFFREY D. LIGHT  
BRIAN O. O'MARA  
401 B Street, Suite 1600  
San Diego, CA 92101  
Telephone: 619/231-1058

- and -

PATRICK J. COUGHLIN  
100 Pine Street, Suite 2600  
San Francisco, CA 94111  
Telephone: 415/288-4545

- and -

JONATHAN E. BEHAR  
9601 Wilshire Blvd., Suite 510  
Los Angeles, CA 90210  
Telephone: 310/859-3100

KAPLAN FOX & KILSHEIMER LLP

ROBERT N. KAPLAN  
FREDERIC S. FOX  
805 Third Avenue, 22nd Floor  
New York, NY 10022  
Telephone: 212/687-1980

- and -

LAURENCE D. KING  
555 Montgomery Street, Suite 1501  
San Francisco, CA 94111  
Telephone: 415/772-4700

- and -

LORI S. BRODY  
11601 Wilshire Blvd., Suite 300  
Los Angeles, CA 90025  
Telephone: 310/439-6006

Co-Lead Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

In re NOVELL, INC. SECURITIES  
LITIGATION

This Document Relates To:

ALL ACTIONS.

) Case No. 2:99-CV-995 TC

) CLASS ACTION

) Judge Tena Campbell  
) Magistrate Judge David Nuffer

) PROOF OF CLAIM AND RELEASE

EXHIBIT A-2

## **I. GENERAL INSTRUCTIONS**

1. To recover as a Member of the Settlement Class based on your claims in the action entitled *In re Novell, Inc. Securities Litigation*, Case No. 2:99-CV-995 TC (the "Litigation"), you must complete and, on page \_\_\_\_ hereof, sign this Proof of Claim and Release. If you fail to file a properly addressed (as set forth in paragraph 3 below) Proof of Claim and Release, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed settlement of the Litigation.

2. Submission of this Proof of Claim and Release, however, does not assure that you will share in the proceeds of settlement in the Litigation.

3. YOU MUST MAIL YOUR COMPLETED AND SIGNED PROOF OF CLAIM AND RELEASE POSTMARKED ON OR BEFORE \_\_\_\_\_, 2005, ADDRESSED AS FOLLOWS:

*Novell Securities Litigation*  
Claims Administrator  
c/o Gilardi & Co. LLC  
P.O. Box 8040  
San Rafael, CA 94912-8040

If you are NOT a Member of the Settlement Class (as defined in the "Notice of Pendency and Proposed Settlement of Class Action") DO NOT submit a Proof of Claim and Release form.

4. If you are a Member of the Settlement Class, you are bound by the terms of any judgment entered in the Litigation, WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM AND RELEASE.

## **II. DEFINITIONS**

1. "Defendants" means Novell, Inc., John A. Young, Joseph A. Marengi and James R. Tolonen.

2. "Released Persons" means each and all of the Defendants and their Related Parties.

### **III. CLAIMANT IDENTIFICATION**

1. If you purchased Novell stock and held the certificate(s) in your name, you are the beneficial purchaser as well as the record purchaser. If, however, the certificate(s) were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial purchaser and the third party is the record purchaser.

2. Use Part I of this form entitled "Claimant Identification" to identify each purchaser of record ("nominee"), if different from the beneficial purchaser of Novell stock which forms the basis of this claim. **THIS CLAIM MUST BE FILED BY THE ACTUAL BENEFICIAL PURCHASER OR PURCHASERS, OR THE LEGAL REPRESENTATIVE OF SUCH PURCHASER OR PURCHASERS OF THE NOVELL STOCK UPON WHICH THIS CLAIM IS BASED.**

3. All joint purchasers must sign this claim. Executors, administrators, guardians, conservators and trustees must complete and sign this claim on behalf of Persons represented by them and their authority must accompany this claim and their titles or capacities must be stated. The Social Security (or taxpayer identification) number and telephone number of the beneficial owner may be used in verifying the claim. Failure to provide the foregoing information could delay verification of your claim or result in rejection of the claim.

### **IV. CLAIM FORM**

1. Use Part II of this form entitled "Schedule of Transactions in Novell Stock" to supply all required details of your transaction(s) in Novell stock. If you need more space or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

2. On the schedules, provide all of the requested information with respect to *all* of your purchases and *all* of your sales of Novell stock which took place at any time beginning November 1, 1996 through April 22, 1997, inclusive (the "Settlement Class Period"), whether such transactions resulted in a profit or a loss. Failure to report all such transactions may result in the rejection of your claim.

3. List each transaction in the Settlement Class Period separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day and year of each transaction you list.

4. The date of covering a "short sale" is deemed to be the date of purchase of Novell stock. The date of a "short sale" is deemed to be the date of sale.

5. Broker confirmations or other documentation of your transactions in Novell stock should be attached to your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

6. The above requests are designed to provide the minimum amount of information necessary to process the most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your losses. In some cases where the Claims Administrator cannot perform the calculation accurately or at a reasonable cost to the Settlement Class with the information provided, the Claims Administrator may condition acceptance of the claim upon the production of additional information and/or the hiring of an accounting expert at the claimant's cost.

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

*In re Novell, Inc. Securities Litigation*

Case No. 2:99-CV-995 TC

PROOF OF CLAIM

Must be Postmarked No Later Than:

\_\_\_\_\_, 2005

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Beneficial Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Foreign Province

\_\_\_\_\_  
Foreign Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual

\_\_\_\_\_  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
(work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
(home)

\_\_\_\_\_  
Record Owner's Name (if different from beneficial owner listed above)

**PART II: SCHEDULE OF TRANSACTIONS IN NOVELL STOCK**

A. Number of shares of Novell stock held at the beginning of trading on November 1, 1996: \_\_\_\_\_

B. Novell Stock Purchases (November 1, 1996 – April 22, 1997, inclusive):

Trade Date Mo. Day Year	Number of Shares Purchased	Total Purchase Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

**IMPORTANT:** Identify by number listed above all purchases in which you covered a "short sale": \_\_\_\_\_

C. Novell Stock Sales (November 1, 1996 – April 22, 1997, inclusive):

Trade Date Mo. Day Year	Number of Shares Sold	Total Sales Price
1. _____	1. _____	1. _____
2. _____	2. _____	2. _____
3. _____	3. _____	3. _____

D. Number of shares of Novell stock held at close of trading on April 22, 1997: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOU MUST READ AND SIGN THE RELEASE ON PAGE \_\_\_\_\_. FAILURE TO SIGN THE RELEASE MAY RESULT IN A DELAY IN PROCESSING OR REJECTION OF YOUR CLAIM.**

**V. SUBMISSION TO JURISDICTION OF COURT AND  
ACKNOWLEDGMENTS**

I submit this Proof of Claim and Release under the terms of the Stipulation of Settlement described in the Notice. I also submit to the jurisdiction of the United States District Court for the District of Utah, Central Division, with respect to my claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I further acknowledge that I am bound by and subject to the terms of any judgment that may be entered in the Litigation. I agree to furnish additional information to Plaintiffs' Settlement Counsel to support this claim if required to do so. I have not submitted any other claim covering the same purchases of Novell stock during the Settlement Class Period and know of no other person having done so on my behalf.

**VI. RELEASE**

1. I hereby acknowledge full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Defendants and each and all of their "Related Parties," defined as each of a Defendant's past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers, outside auditors and accountants, controlling shareholders, attorneys, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of an individual defendant's immediate family, or any trust of which any individual defendant is the settlor or which is for the benefit of an individual defendant's family.

2. "Released Claims" shall collectively mean all claims (including "Unknown Claims" as defined below), demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, whether or not concealed or hidden, asserted or that might have been asserted, including, without limitation, claims for negligence, gross negligence, breach of duty

of care and/or breach of duty of loyalty, fraud, breach of fiduciary duty, or violations of any state or federal statutes, rules or regulations, by any Lead Plaintiff or Settlement Class Member against the Released Persons arising out of, based upon or related to both the purchase of Novell stock by any Lead Plaintiff or any Settlement Class Member during the Settlement Class Period and the allegations, facts, transactions, events, occurrences, acts, disclosures, representations, statements, omissions, or failures to act which were or could have been alleged in the Litigation. Released Claims also includes any and all claims arising out of, relating to, or in connection with the settlement or resolution of the Litigation between the Settling Parties.

3. "Unknown Claims" means any Released Claims which any Lead Plaintiff or Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, the Lead Plaintiffs shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code §1542, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

The Lead Plaintiffs shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. The Lead Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from



those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but each Lead Plaintiff shall expressly and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims against the Released Persons, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Lead Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

4. This release shall be of no force or effect unless and until the Court approves the Stipulation of Settlement and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

5. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

6. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Novell stock which occurred during the Settlement Class Period as well as the number of Novell stock shares held by me (us) at the opening of trading on November 1, 1996, and at the close of trading on April 22, 1997.

SUBSTITUTE FORM W-9  
Request for Taxpayer Identification Number ("TIN") and Certification

PART I

NAME: \_\_\_\_\_

Check appropriate box:

- |   |                                       |
|---|---------------------------------------|
| <input type="checkbox"/> Individual/Sole Proprietor                       | <input type="checkbox"/> Pension Plan |
| <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership | <input type="checkbox"/> Trust        |
| <input type="checkbox"/> IRA <input type="checkbox"/> Other               |                                       |

Enter TIN on appropriate line.

- ☐ For individuals, this is your social security number ("SSN").
- ☐ For sole proprietors, you must show your individual name, but you may also enter your business or "doing business as" name. You may enter either your SSN or your Employer Identification Number ("EIN").
- ☐ For other entities, it is your EIN.

\_\_\_\_\_-\_\_\_\_\_-\_\_\_\_\_- or \_\_\_\_\_  
Social Security Number                      Employer Identification Number

PART II

For Payees Exempt from Backup Withholding

If you are exempt from backup withholding, enter your correct TIN in Part I and write "exempt" on the following line: \_\_\_\_\_

PART III

Certification

UNDER THE PENALTY OF PERJURY, I (WE) CERTIFY THAT:

1. The number shown on this form is my correct TIN; and
2. I (we) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(C) of the Internal Revenue Code because: (a) I am (we are) exempt from backup withholding; or (b) I (we) have not been notified by the Internal Revenue Service that I am (we are)

subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the Internal Revenue Service has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, you must cross out Item 2 above.

*SEE ENCLOSED FORM W-9 INSTRUCTIONS*

The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
(Month/Year)

in \_\_\_\_\_,  
(City) (State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing, e.g.,  
Beneficial Purchaser, Executor or  
Administrator)

ACCURATE CLAIMS PROCESSING TAKES A

SIGNIFICANT AMOUNT OF TIME.

THANK YOU FOR YOUR PATIENCE.

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original stock certificates.
4. Keep a copy of your claim form for your records.
5. If you desire an acknowledgment of receipt of your claim form, please send it

Certified Mail, Return Receipt Requested.

6. If you move, please send us your new address.

S:\Settlement\Novell3.set\A2-00013732.doc

EXHIBIT A-3

BURBIDGE & MITCHELL  
RICHARD D. BURBIDGE, #0492  
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- and -

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- and -

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- and -

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Los Angeles, CA 90025  
Telephone: 310/439-6006

Co-Lead Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

In re NOVELL, INC. SECURITIES  
LITIGATION

This Document Relates To:

ALL ACTIONS.

) Case No. 2:99-CV-995 TC

) CLASS ACTION

) Judge Tena Campbell  
) Magistrate Judge David Nuffer

) SUMMARY NOTICE

EXHIBIT A-3

TO: ALL PERSONS WHO PURCHASED NOVELL, INC. ("NOVELL") STOCK  
DURING THE PERIOD BEGINNING NOVEMBER 1, 1996 THROUGH APRIL  
22, 1997, INCLUSIVE

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the District of Utah, Central Division, that a hearing will be held on \_\_\_\_\_, 2005, at \_\_\_\_\_.m., before the Honorable Tena Campbell at the Frank E. Moss U.S. Courthouse, 350 South Main Street, Salt Lake City, Utah, for the purpose of determining (1) whether the proposed settlement of the claims in the Litigation for the sum of \$13,900,000 in cash plus accrued interest should be approved by the Court as fair, reasonable and adequate; (2) whether, thereafter, this Litigation should be dismissed with prejudice as against the Defendants as set forth in the Stipulation of Settlement dated as of September 30, 2004; (3) whether the Plan of Allocation is fair, reasonable and adequate and therefore should be approved; and (4) whether the application of Lead Plaintiffs' counsel for the payment of attorneys' fees and reimbursement of costs and expenses incurred in connection with prosecuting this Litigation against the Defendants as well as expenses of Lead Plaintiffs should be approved.

If you purchased Novell stock during the period beginning November 1, 1996 through April 22, 1997, inclusive, your rights may be affected by the settlement of this Litigation. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action ("Notice") and a copy of the Proof of Claim and Release form, you may obtain copies by writing to *Novell Securities Litigation*, c/o Gilardi & Co. LLC, P.O. Box 8040, San Rafael, CA 94912-8040. If you are a Settlement Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release no later than \_\_\_\_\_, 2005, establishing that you are entitled to recovery.

If you desire to be excluded from the Settlement Class, you must file a Request for Exclusion by \_\_\_\_\_, 2005, in the manner and form explained in the detailed Notice referred to above.

All Members of the Settlement Class who have not timely requested exclusion from the Settlement Class will be bound by any judgment entered in the Litigation pursuant to the Stipulation.

Any objection to the settlement must be mailed or delivered such that it is received by each of the following no later than \_\_\_\_\_, 2005:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION  
FRANK E. MOSS U.S. COURTHOUSE  
350 South Main Street, Room 150  
Salt Lake City, UT 84101

*Lead Counsel for Plaintiffs:*

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RUDMAN & ROBBINS LLP  
JEFFREY D. LIGHT  
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San Francisco, CA 94111

*Counsel for Defendants:*

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DANIEL W. TURBOW  
KENT W. EASTER  
WILSON, SONSINI, GOODRICH &  
ROSATI, P.C.  
650 Page Mill Road  
Palo Alto, CA 94304-1050



**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.** If you have any questions about the settlement, you may contact Lead Counsel for plaintiffs at the address listed above.

DATED: \_\_\_\_\_, 2005

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

S:\Settlement\Novell3.set\A3-00013733.doc

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:99-cv-00995

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Richard D Burbidge, Esq.  
BURBIDGE & MITCHELL  
215 S STATE STE 920  
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EMAIL

Henry Rosen, Esq.  
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SAN FRANCISCO, CA 94111  
EMAIL

United States District Court  
District of Utah

---

Markus B. Zimmer  
Clerk of Court

Louise S. York  
Chief Deputy

February 24, 2005

Mr. Patrick Fisher, Clerk United  
States Court of Appeals for the  
Tenth Circuit  
1823 Stout Street Denver, CO  
80257

—

RE: 05-4007  
Van Houten v. Sansone  
Lower Docket: 1:02-CV-165-PGC

Dear Clerk of Court:

Please be advised that the record is complete for the purposes of appeal.

Sincerely,

Markus B. Zimmer, Clerk

By: /S  
Aaron Paskins  
Appeal's Clerk

cc: Counsel of Record

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:02-cv-00165

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Steven C. Russell, Esq.  
AFFORDABLE LEGAL ADVOCATES  
180 S 300 W STE 170  
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PO BOX 140856  
SALT LAKE CITY, UT 84114-0856  
EMAIL

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUSTUS A. IRELAND,

Defendant.

Case No. 2:04-CR-0658 TS

ORDER

Judge Ted Stewart

---

Before the Court is the February 18, 2005, MOTION TO CONTINUE SENTENCING HEARING. For good cause shown, the Court GRANTS that motion, and hereby continues the sentencing hearing in the above-captioned case until March, 8, 2005, at 1:30 pm.

DATED this 23rd day of February, 2005.

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing MOTION TO CONTINUE SENTENCING HEARING was mailed, postage prepaid, to all parties named below, this 18<sup>th</sup> day of February, 2005.

A. Chelsea Koch  
Utah Federal Defender Office  
46 West Broadway, Suite 110  
Salt Lake City, UT 84101



---

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00658

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Robert C Lunnen, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Mr. Richard G MacDougall, Esq.  
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A. Chelsea Koch, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL



FILED  
CLERK U.S. DISTRICT COURT  
FEB 24 A 10:19  
BY: [illegible]  
DEPUTY CLERK  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH – CENTRAL DIVISION

MICHAEL SAVILLE,  
Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

Defendant.

**ORDER & OPINION**

Case No. 2:00-cv-681

Judge Dee Benson

Plaintiff Michael Saville (“Saville”) alleges unlawful retaliation in violation of the Fair Labor Standards Act (“FLSA”) against Defendant International Business Machine (“IBM”). Before the Court is Defendant’s Motion for Summary Judgment. Having considered the parties’ arguments, briefs, and the relevant law, the Defendant’s motion is GRANTED for the reasons set forth below.

**BACKGROUND**

Saville was employed by IBM from the mid-1960s until October 31, 1998. Saville was an Account Systems Services Representative, also known as a Customer Engineer (“CE”), from 1996 through 1998. IBM had different levels or “Bands” of CEs based on an employee’s level of experience and responsibility. Saville was a Band 5 CE, the second highest level, and the most senior in his group. As a CE, Saville was responsible for maintaining IBM equipment at customer locations, serving as a technical resource for customers, managing customer accounts in a cost-efficient manner, and influencing customers to purchase additional IBM products and services. The three essential functions of Saville’s job were: (1) installing and maintaining IBM

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equipment for customers; (2) developing positive relationships with customer management and staff to ensure a high level of overall customer satisfaction in all assigned accounts; and (3) mentoring and training less experienced CEs.

In 1995, Saville's managers began to note problems with the manner in which he interacted with customers, management, and peers. In Saville's annual performance review (known as a "Personal Business Commitment" or "PBC"), he received the lowest of three possible ratings – "More is expected."<sup>1</sup> Saville's problems in mentoring and relating to his peers continued in 1996, as reflected in his PBC: "Mike . . . has had a hard time to mentor [sic] others because a lot of them prefers [sic] not to work with him . . . Mike should continue to work on his relationships with his peers." Despite these problems, however, Saville received the second highest rating in his 1996 PBC – "Achieved commitments."

In January, 1997, Vickie Fullmer ("Fullmer") became Saville's supervisor. During her first year supervising Saville, Saville performed well technically, but continued to have problems with his peer relationships. As part of the annual PBC, IBM solicited comments from each employee's peers in "360 Degree Feedback." Saville's peers made positive comments about his technical ability, but some negative comments regarding his relations with them and with customers.<sup>2</sup> Fullmer rated Saville as having "Achieved commitments" on his 1997 PBC because

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<sup>1</sup>Jim Fawver, Saville's manager, stated, "more is expected in his relationships and the way he communicates with others. This has lead [sic] some people to not want to use him in his specialist capacity or as a peer. Mike at times comes across negative and adversarial causing some people to not want to deal with him."

<sup>2</sup>Saville's peers made the following comments:

"I know Mike is trying harder to have better 'bedside manners' and I think he will accomplish the task. His customer relations is [sic] sometimes strained because of what

she had seen some improvement in his team building, customer relations, mentoring, and interpersonal skills, and because he had valuable technical abilities.

In late 1997 and early 1998, Saville and Fullmer had ongoing e-mail discussions regarding IBM's goal of reducing the amount of overtime worked by CEs to control rising costs. Saville expressed his frustrations with IBM's overtime policy, namely that it was difficult for him and other CEs to fulfill their job requirements without incurring overtime. Saville did not state that he thought IBM was violating overtime laws in these e-mail discussions. Fullmer responded to Saville's concerns by telling him to record his overtime correctly and accurately.

According to Fullmer, Saville's problems with interpersonal relations and mentoring did not improve in 1998, and in fact, became worse. In June, Fullmer received a complaint from Orem City, one of Saville's customers. Orem City requested that Saville be taken off the account because he was "obnoxious and acted inappropriately" in his dealings with Orem City employees working on a systems upgrade. Saville claims that he was replaced on the Orem City account because he did not have the requisite skills to perform the task requested by the customer. Saville also testified that during this time period, he was disappointed he did not receive a promotion and was unhappy due to a lack of communication with Fullmer and other management personnel.

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he says. Mike has this problem with his peers too . . . "

"Mike is great to work with and I appreciate his skills as wells [sic] as his candor in approaching a problem. A possible point for improvement might be for Mike to be a little less forceful when working with customers when he tries to have them understand his approach with certain projects . . . "

"Mike works to [sic] many hours and it makes him grouchy." See IBM Ex. H.

Because Fullmer thought that Saville's performance was headed in the wrong direction and was unacceptable, she decided to give him an interim PBC review. IBM uses interim reviews to tell employees that they are trending toward a potential lowering of their performance rating with the hope that they will correct their performance before the annual review. Fullmer met with Saville in July 1998 to discuss her concerns and tell him that he was being reviewed on an interim basis. She told him that his performance rating was heading downward and was a whole level below what he had been rated in 1997. Fullmer testified that she made this assessment based on Saville's negative attitude, lack of leadership, and continued problems dealing with his peers and customers.

Saville did not think his interim PBC was fair, and, therefore, submitted an anonymous complaint to IBM human resources through IBM's Speak Up program, which allows employees to raise issues, complaints, or concerns anonymously with human resources personnel. In his complaint, Saville stated that he believed the interim PBC was a result of Fullmer's reaction to a negative Employee Opinion Survey about her effectiveness as a manager. On July 17, 1998, Saville had a telephone conference regarding his Speak Up with Pat Pye ("Pye"), an IBM Human Resources officer. Pye suggested that Saville discuss his concerns with Brian Myers ("Myers"), his Second Line Manager.

On September 1, 1998, Saville met with Myers to discuss his concerns. Saville stated that he thought the interim review was unfair and that Fullmer was reacting to what he believed to be negative feedback on an employee opinion survey. Saville stated he thought Fullmer was an ineffective leader and his group's morale was down as a consequence. Saville also testified that he voiced his concern about how IBM's overtime directives were forcing CEs to work and

not report overtime. Following the meeting, Myers investigated Saville's concerns by interviewing other members of his group. Myers concluded that Saville's concerns were without merit, and instead, that Saville had serious communication problems with Fullmer and other customer engineers.

Fullmer continued to see problems with Saville's performance following the interim PBC. In late September 1998, she met with Myers to tell him she had decided to put Saville on a formal performance improvement plan.<sup>3</sup> Myers also suggested offering Saville the alternative option of a severance package, and Fullmer agreed that this would be a suitable alternative offer.

Myers met with Saville on September 30, 1998. Myers told Saville that his interviews with Saville's peers had not confirmed Saville's claim that Fullmer was the problem. Rather, the interviews had revealed that Saville had serious performance problems. Myers also told Saville that his attitude, leadership, mentoring, and support of Fullmer were unacceptable and that his attitude was causing customer complaints. Saville responded, in part, by admitting that he had a negative attitude, but blamed it on how he felt he had been treated by management. Myers explained to Saville that he needed to make an effort to turn things around and that changes had to be made immediately. Myers told Saville that he would have the option of going on a ninety-day performance improvement plan or leaving IBM with a severance package. Myers concluded the conversation by stating that Fullmer would provide further details regarding the two options.

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<sup>3</sup>Both Fullmer and Myers testified that placing an employee on a performance improvement plan does not mean that the employee is automatically going to be terminated. Rather, it is a real opportunity for the employee to correct deficient performance. Myers also testified that he has had experience with other IBM employees who successfully completed improvement plans.

On October 5, 1998, Fullmer met with Saville and explained the two options in more detail. She told him that he had fallen short of his job expectations and could go on a thirty-day performance improvement plan<sup>4</sup> to correct his problems, or, alternatively, he could leave IBM and accept a severance package. Fullmer told Saville that he had thirty days to make a decision. Later that month, Saville rejected both options presented by Fullmer. Instead, he told Fullmer that he had decided to retire from IBM. Specifically, he rejected the IBM "Individual Enhanced Separation Allowance" and chose "Separation: Individual Separation/Retirement Reasons - Management Initiated."<sup>5</sup> On August 24, 2000, Saville brought suit against IBM, alleging unlawful retaliation in violation of the FLSA.

### DISCUSSION

After viewing the evidence and drawing all reasonable inferences in the light most favorable to Saville, the Court finds that Saville has failed to demonstrate a genuine issue of material fact in his allegations that IBM violated the FLSA through its employment decisions. Therefore, summary judgment is appropriate. Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). In considering whether genuine issues of material fact exist, the Court determines whether a reasonable jury could return a verdict for the nonmoving party in the face of all the evidence presented. *See Anderson v.*

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<sup>4</sup>According to Saville, Myers told Saville that the performance improvement plan would be ninety days, and then Fullmer shorted the time period to thirty days.

<sup>5</sup>The corresponding Human Resources code is as follows: "8J - No Payment - Involuntary Separation (Permitted to Retire) - Inability meet IBM Standards of Job Performance."

*Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986); *Clifton v. Craig*, 924 F.2d 182, 183 (10th Cir. 1991). The moving party need not negate the nonmoving party's claims, but need only point out that "there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). For purposes of this motion, the Court construes all facts and reasonable inferences in the light most favorable to plaintiff. See *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Wright v. Southwestern Bell Tel. Co.*, 925 F.2d 1288, 1292 (10th Cir. 1991).

### **Retaliation in Violation of the FLSA**

Saville's sole claim against IBM is for retaliation under the FLSA. The FLSA prohibits any person from retaliating against an employee for asserting his rights under the Act.

Specifically, the FLSA makes it unlawful for an employer

[t]o discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to [the FLSA], or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.

29 U.S.C. § 215(a)(3). The Tenth Circuit applies a "motivating factor" analysis to claims of retaliatory discharge: "When the 'immediate cause or motivating factor of a discharge is the employee's assertion of statutory rights, the discharge is discriminatory under § 215(a)(3) whether or not other grounds for discharge exist.' If retaliation is not the motivating factor, then the discharge is not unlawful."<sup>6</sup> *Marx v. Schnuck Markets, Inc.*, 76 F.3d 324, 329 (10th Cir. 1996) (quoting *Martin v. Gingerbread House, Inc.*, 977 F.2d 1405, 1408 (10th Cir. 1992)).

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<sup>6</sup>The Tenth Circuit has held that the "motivating factor" test is equivalent to a "but for" test; a discharge is unlawful under § 215(a)(3) "only if would have occurred *but for* the retaliatory intent." *McKenzie v. Renberg's Inc.*, 94 F.3d 1478, 1483 (10th Cir. 1996) (quoting *Martin*, 977 F.2d at 1408 n.4)) (emphasis in original).

FLSA retaliation claims are analyzed under a three-pronged test initially articulated in *McDonnell Douglas Corp. v. Green*, 441 U.S. 792 (1973). *Richmond v. ONEOK, Inc.*, 120 F.3d 205, 208 (10th Cir. 1997) (citing *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (10th Cir. 1997)). Under this analysis, a plaintiff must first establish a prima facie case of retaliation. *Id.* The burden then shifts to the employer to offer a legitimate reason for the plaintiff's termination. *Id.* Then the burden "shifts back to the plaintiff to show that 'there is a genuine dispute of material fact as to whether the employer's proffered reason for the challenged action is pretextual.'" *Id.* (quoting *Morgan*, 108 F.3d at 1323).

To establish a prima facie case of retaliation, Saville must demonstrate that (1) he engaged in activity protected by the FLSA; (2) he suffered adverse action by IBM subsequent to or contemporaneous with such employee activity; and (3) a causal connection existed between Saville's activity and IBM's adverse action. *Conner v. Schnuck Markets, Inc.*, 121 F.3d 1390, 1394 (10th Cir. 1997).

### **1. Protected Activity**

First, Saville must show that he engaged in activity protected by the FLSA. *Id.* Although § 215(a)(3) specifically lists the types of activities which are protected from retaliation, the Tenth Circuit has held that it also protects employees who articulate a good faith belief that the employer is violating their rights under the FLSA. *Love v. RE/MAX of Am., Inc.* 738 F.2d 383, 387 (10th Cir. 1984). Moreover, the provision "applies to the unofficial assertion of rights through complaints at work." *Id.*



Saville alleges he was engaged in protected activity when he made complaints to management<sup>7</sup> that IBM's directive to reduce overtime was resulting in employees working overtime but not recording the hours, and thus, not being paid for overtime. IBM avers that Saville can only show that he disagreed with IBM's company policy regarding overtime, and this is not sufficient to assert his statutory rights under the FLSA. The Court agrees with IBM. The Tenth Circuit has stated, "we have never held that an employee is insulated from retaliation for participating in activities which are neither adverse to the company nor supportive of adverse rights under the statute which are asserted against the company." *McKenzie*, 94 F.3d at 1486. In order to be protected under § 215(a)(3), an employee is required to make a "good faith *assertion* of [one's] statutory rights." *Id.* (quoting *Love*, 738 F.2d at 387) (emphasis and alteration in original). In other words, "it is the assertion of statutory rights (i.e., the *advocacy* of rights) by taking some action adverse to the company – whether via formal complaint, providing testimony in an FLSA proceeding, complaining to superiors about inadequate pay, or otherwise – that is the hallmark of protected activity under § 215(a)(3)." *McKenzie*, 94 F.3d at 1486 (emphasis in original).

In the instant case, Saville merely complained about IBM's company overtime policy and how it was forcing CEs to work and not report overtime. Saville never *asserted* a right adverse to the company. Saville did not initiate a FLSA claim against IBM on his own behalf or on behalf of another employee. Rather, he simply bristled at IBM's directive to reduce overtime.

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<sup>7</sup>Saville alleges that he made these overtime-related complaints to Fullmer, Pye and Myers. IBM claims that Saville has introduced no evidence that he made any such complaints to Fullmer. Viewing the evidence in the light most favorable to the non-moving party, the Court *assumes without deciding* that Fullmer, Pye, and Myers were aware of these alleged complaints.

An employee must “either file (or threaten to file) an action adverse to the employer, actively assist other employees in asserting FLSA rights, or otherwise engage in activities that reasonably could be perceived as a directed towards the assertion of rights protected by the FLSA.” *Id.* at 1486-87. Saville did none of these things. There is no evidence in the record to suggest that Saville was asserting any rights under the FLSA or that he took any action adverse to the company; rather, the record reflects that Saville merely voiced his disagreement with IBM’s overtime policy. Saville therefore lacks an essential element of a retaliation claim – he did not take a position adverse to IBM or assert any rights under the FLSA. Accordingly, the Court finds that Saville did not engage in protected activity under § 215(a)(3).

## **2. Adverse Action**

Even assuming that Saville engaged in protected activity, he cannot show that he suffered adverse action by IBM. An adverse employment action is a detrimental change in the terms or conditions of employment, such as termination. *Conner*, 121 F.3d at 1395 & n.4. IBM argues that it did not take adverse action against Saville, but rather, Saville chose to retire from IBM. Saville alleges that he was, in fact, constructively discharged. Constructive discharge “occurs when an employer, through unlawful acts, makes working conditions so intolerable that a reasonable person in the employee’s position would feel forced to resign.” *Exum v. United States Olympic Committee*, 389 F.3d 1130, 1135 (10th Cir. 2004) (citing *Pennsylvania State Police v. Suders*, — U.S. —, 124 S.Ct. 2342, 2351 (2004) (further citation omitted)). Furthermore, “[w]orking conditions must be so severe that the plaintiff simply had no choice but to quit.” *Id.* (citing *Lighton v. Univ. of Utah*, 209 F.3d 1213, 1222 (10th Cir. 2000); *Yearous v. Niobrara*

*County Mem'l Hosp.*, 128 F.3d 1351, 1357 ) (10th Cir. 1997)). “In contrast, a plaintiff who voluntarily resigns cannot claim that he or she was constructively discharged.” *Id.*

The court’s inquiry “is not whether working conditions at the facility were difficult or unpleasant.” *Id.* (quoting *Yearous*, 128 F.3d at 1357). Rather, Saville must show that, at the time of his resignation, IBM did not offer him the opportunity to make a free choice regarding his employment relationship. *Id.* The Tenth Circuit has previously held that even requiring an employee to choose between resignation and termination is not necessarily a constructive discharge, unless the employee’s decision is involuntary. *Id.*

Here, IBM gave Saville a choice of going on a thirty-day performance improvement plan or resigning from IBM with a severance package. Saville alleges that he was constructively discharged because IBM’s performance plan was not “bona fide” in that it was only thirty days and he had not received written specifics regarding its terms. The Court disagrees, finding that Saville has failed to provide evidence from which a jury could find that his situation was so intolerable that a reasonable person in his position would have felt compelled to retire.

Indeed, Saville was given an opportunity for improvement – the thirty day performance plan – which he undisputedly did not take. Saville’s contention that the performance improvement plan was not “bona fide” because it was only thirty days and not in writing fails. First, courts have not held that performance improvement plans must be ninety days or any other specific time period. *See Agnew v. BASF Corp.*, 286 F.3d 307, 310 (6th Cir. 2002); *Seely v. Runyon*, 1998 U.S. App. LEXIS 31311, at \*8 (10th Cir. Dec. 14, 1998) (unpublished); *Peecook v. Northwestern Nat’l Ins. Group*, 1998 U.S. App. LEXIS at \*11-13 (6th Cir. 1998) (unpublished). Indeed, the shortened thirty day time frame may actually benefit the employee

because the employee will only have to be on his or her “best behavior” for thirty days rather than ninety days. Second, the undisputed evidence reflects that Fullmer was prepared to give Saville a written description of the performance improvement plan if Saville accepted that option. The record also reflects that Fullmer told Saville that the plan would address leadership issues, as well as relations with customers, peers, and management. Moreover, neither of these contentions excuses Saville’s failure to accept the performance improvement plan as an alternative to resignation.

Saville’s own words establish that he voluntarily *chose* to retire from IBM, rather than participate in the thirty day performance plan. On October 30, 1998, Saville sent Fullmer an e-mail stating: “I have made my decision and I guess I am to put ‘in writing’ my intent to [r]etire to you . . . I will be [r]etiring from IBM after 32 [y]ears and 35 days of [l]oyal [d]edicated [s]ervice on October 31, 1998.” Because IBM offered Saville the opportunity to make a free choice regarding his employment relationship, the Court finds that Saville cannot establish constructive discharge.

### **3. Causal Connection**

Even assuming that Saville has satisfied the first two prongs of a *prima facie* case of retaliation, Saville cannot demonstrate that a causal connection existed between his alleged protected activity and IBM’s alleged adverse action. The Tenth Circuit has held that a plaintiff may establish a causal connection “by evidence of circumstances that justify an inference of retaliatory motive, such as protected conduct closely followed by adverse action.” *Conner*, 121 F.3d at 1395 (citing *Burrus v. United Tel. Co. of Kan., Inc.*, 683 F.2d 339, 343 (10th Cir. 1982) (other citations omitted)). However, if the termination is not very closely connected in time to

the protected conduct, the plaintiff will need to rely on additional evidence beyond mere temporal proximity to establish causation. *Id. See also Marx v. Schnuck Markets*, 76 F.3d 324, 329 (10th Cir. 1996) (finding a causal connection where a pattern of retaliatory conduct began against the plaintiff shortly after he filed a FLSA complaint).

In the instant case, Saville alleges that Fullmer, Pye, and Myers were acting in concert with one another and this is sufficient evidence to establish causation. However, Saville has proffered no evidence, other than his own mere speculation, that this occurred. It would be one thing if Saville had evidence of *any* communication between Fullmer, Pye, and Myers – a phone call, an e-mail, a memorandum, another employee's testimony – showing that they were conspiring to discharge him as a result of his alleged overtime complaints. But the record is devoid of any such evidence. Conversely, IBM has proffered the sworn testimony of Fuller and Myers, which contradicts Saville's conspiracy theory. Fullmer testified that she did not learn of Saville's overtime comments in his meeting with Myers until after she had already decided to place him on a performance improvement plan. This evidence is undisputed. Moreover, Fullmer gave Saville his interim PBC before Saville even allegedly complained to Pye and Myers.

#### **4. Pretext**

Even assuming for the sake of argument that Saville has established a *prima facie* case of retaliation, he cannot satisfy his burden of establishing that IBM's legitimate non-retaliatory reasons for the alleged adverse employment action were pretextual. After a plaintiff has established a *prima facie* case of retaliation, the burden of production shifts to the employer to offer a legitimate non-retaliatory reason for the adverse employment action. *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1178 (10th Cir. 1990). The employer need not prove the absence of

retaliatory motive; rather, the employer need only produce evidence that would dispel the inference of retaliation. *Conner*, 121 F.3d at 1395.

IBM proffers the following three non-retaliatory reasons for the alleged adverse employment action: (1) Saville was failing to interact positively with customers and peers to ensure customer satisfaction and to mentor the less experienced CEs in his group; (2) Fullmer received reports from peers and customers that Saville's communication style was preventing peers from seeking mentoring and was alienating customers to the point where customers<sup>8</sup> requested that Saville be removed from work on their accounts; (3) Fullmer believed Saville was inappropriately challenging her authority in group meetings and denigrating her and other IBM management.

Saville argues that IBM's evidence supporting these non-retaliatory reasons is lacking and based largely on hearsay. Despite this broad assertion, Saville concedes that IBM's evidence is sufficient, asserting that he has raised a genuine issue of material fact as to whether such reasons are pretextual. Therefore, the Court finds that IBM has proffered sufficient non-retaliatory reasons.

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<sup>8</sup>IBM claims that both Orem City and Weider Foods asked Fullmer to remove Saville from their accounts. Saville denies any conflicts with these two IBM customers. First, Saville claims that he was replaced on the Orem City account because he did not have the requisite skills to perform the task requested by the customer. This claim is contradicted by Fullmer's testimony as well as Clarke Christensen, an Orem City employee. Christensen testified that Saville was "obnoxious and acted inappropriately," so Orem City complained to IBM and asked that Saville be removed from the account. Regarding Weider Foods, Saville claims that he was removed from their account because they preferred to work with another CE. This statement is contradicted by Fullmer's testimony that Weider Foods asked that Saville be removed from the account because they were not receiving adequate customer support.

Because IBM has legitimate non-retaliatory reasons for the alleged adverse employment action, the burden shifts back to Saville to show that these reasons are pretextual. A plaintiff may show pretext by demonstrating “such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.” *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1179 (10th Cir. 1999) (quoting *Morgan v. Hilti, Inc.*, 108 F.3d 1319, 1323 (1997)). “Mere conjecture that the employer’s explanation is pretext is insufficient to defeat summary judgment.” *Id.*

Saville proffers three conclusory explanations in response to IBM’s non-retaliatory reasons for the alleged adverse employment action: (1) his negative attitude was a product of Fullmer’s misperception of his “articulate and forceful” sharing of his concerns; (2) his problems with peers was the result of IBM’s job structure; and (3) his problems with customers were the fault of the customers and Fullmer’s misinterpretation of customers’ complaints. IBM argues that Saville has failed to demonstrate pretext because he has no evidence to show that Fullmer did not honestly and in good faith perceive Saville’s performance as needing improvement. The Court agrees with IBM. Indeed, the record is devoid of any evidence that Fullmer’s stated reasons for her decision to place Saville on a performance improvement plan were based on anything other than his failure to interact positively with customers, peers, and management.

Rather, the evidence on the record demonstrates that Saville has had difficulty interacting with peers, management, and customers since 1995, long before Saville’s passing comments about overtime. Furthermore, this evidence is collaborated by Fullmer’s uncontradicted

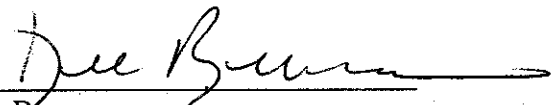
testimony that this was the sole reason that she decided to place Saville on a performance improvement plan. In order to survive summary judgment, Saville can "not rest on his allegations of a conspiracy to get a jury without 'any significant probative evidence tending to support the complaint.'" *Liberty Lobby, Inc.*, 477 U.S. at 248 (quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 290 (1968)). Despite the conspiracy theory Saville so artfully tries to craft, the Court finds he has failed to provide sufficient evidence showing IBM's proffered non-retaliatory reasons for the adverse action were pretextual.

### CONCLUSION

In *Liberty Lobby*, the Supreme Court carefully announced the basis for summary judgment: the plaintiff "may not rest upon the mere allegations or denials of his pleadings, but . . . must set forth specific facts showing that there is a genuine issue for trial." *Id.* (quotation omitted). After viewing the evidence and drawing all reasonable inferences in the light most favorable to Saville, the Court finds that Saville has failed to demonstrate a genuine issue of material fact for trial. Accordingly, the Court GRANTS Defendant's Motion for Summary Judgment.

IT IS SO ORDERED.

DATED this 23<sup>rd</sup> day of February, 2005.

  
Dee Benson  
United States District Judge



United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:00-cv-00681

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

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TODD F. BOVO,

Plaintiff,

vs.

CITY OF OREM POLICE DEPARTMENT,  
et al.,

Defendants.

**ORDER and OPINION**

Case No. 2:04-CV-0344-DB

Judge Dee Benson

**I. INTRODUCTION**

Plaintiff Todd F. Bovo ("Bovo") brings this action to recover against Defendants City of Orem Police Department ("Department"), Orem City police officers Healy, Bingham, Crook, Adams, Lieutenant Doug Edwards, Director of Public Safety Michael J. Larsen, and Orem City Prosecutor Robert Church. This action stems from a motor vehicle incident that led to Plaintiff's arrest. As a result of that incident, Plaintiff claims the defendants violated several of his constitutional rights. Plaintiff alleges wrongful arrest, violation of due process, unlawful detention, unlawful search, use of excessive force, and wrongful prosecution. Before the Court is Defendants' Motion for Summary Judgment on all claims. Having considered the parties' briefs and the relevant law, the Defendants' motion is GRANTED for the reasons set forth below.

**II. BACKGROUND**

On April 6, 2002, Bovo was driving his blue Honda in the city of Orem when he became upset at the female driver in front of him. Bovo apparently became agitated at the driver's slow rate of speed and he honked his horn, flashed his lights, drove on the right shoulder, and engaged

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in other erratic activity that made the driver nervous. Frightened, the driver called the police on her cellular phone to report Bovo's reckless driving. The police told the driver to follow Bovo's vehicle until the police arrived and could pull him over. When the police arrived, the officers pulled Bovo and the complainant over and ordered Bovo out of his vehicle. While the officers were speaking with the other driver, Bovo mouthed threats and made intimidating gestures toward her. Because the officers were facing the complainant with their backs to Bovo, they did not see Bovo make the threats. However, the officers believed that the complainant's allegations were credible and therefore arrested Bovo and cited him for disorderly conduct as well as reckless driving.

Bovo contested the citations by appearing in Utah's Fourth District Court. At his arraignment, Bovo requested a jury but the trial judge denied Bovo's request, stating that Bovo was in no jeopardy of being sentenced to prison. A bench trial was held and the trial judge found Bovo guilty on both charges and sentenced him to a six-month suspended prison sentence. On appeal, Bovo argued that (1) the trial court erred in finding that the Orem City police officers had probable cause to arrest him, and (2) the trial court erred when it denied him a jury trial. The appellate court affirmed the district court's decision that the officers had probable cause to arrest Bovo for reckless driving and disorderly conduct, but found the trial judge had erred in denying Bovo a jury trial. The case was remanded for further proceedings. On remand, Orem City dropped the charges against Bovo and terminated its prosecution.

### **III. DISCUSSION**

After viewing the evidence and drawing all reasonable inferences in the light most favorable to Bovo, the Court finds that Bovo has failed to demonstrate a genuine issue of

material fact in his allegations that the Defendants violated his constitutional rights. Therefore, summary judgment in favor of the Defendants is appropriate. "Summary judgment is proper 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" Bower v. Stein Eriksen Lodge Owners Ass'n, Inc., 201 F. Supp. 2d 1134, 1137 (D. Utah 2002) (quoting Fed.R.Civ.P. 56(c)). "In applying this standard, the court must construe all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party." Id (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Pueblo of Santa Ana v. Kelly, 104 F.3d 1546, 1552 (10th Cir. 1997)).

#### **Wrongful Arrest**

In his complaint, Bovo asserts that he was wrongfully arrested for disorderly conduct and reckless driving. "A plaintiff may recover damages under §1983 for wrongful arrest if [he] shows [he] was arrested without probable cause." Cottrell v. Kaysville City, Utah, 994 F.2d 730-34 (10th Cir. 1993); see also Franklin v. Thompson, 981 F.2d 1168, 1170 n.3 (10th Cir. 1992). Bovo claims that his arresting officers lacked probable cause to arrest him for reckless driving and disorderly conduct. Bovo primarily argues that the officers inappropriately based their assessment of probable cause solely on a witness' account of his actions. Bovo argues that because the officers did not personally view either his erratic driving or the alleged threats he made to the driver of the other car, they lacked probable cause to arrest him. The Defendants argue, however, that it is already established through the principles of *res judicata* that Bovo's arresting officers had probable cause to arrest him. *Res judicata* "bars the relitigation by the parties or their privies of a claim for relief that was once litigated on the merits and resulted in a

final judgment between the same parties or their privies.” Reeder v. Kermit Johnson, Alphagraphics, Inc., 723 F. Supp. 1428, 1432 (D. Utah 1989) (quoting Penrod v. Nu Creation Crème, Inc., 669 P.2d 873, 875 (Utah 1983)).

“A federal court asked to determine whether a claim before it is precluded by a previous state court decision must look first to preclusion principles of the state wherein the rendering state court resides. . . .” Id. at 1431. Under Utah law, a party asserting collateral estoppel as a defense must show:

(1) the issue decided in the prior adjudication must be identical to the one presented in the action in question; (2) there must be a final judgment on the merits; (3) the party against whom the plea is asserted must be a party in privity with a party to the prior adjudication; and (4) the issue in the first action must be completely, fully, and fairly litigated.

Career Services Review Bd. v. Utah Dept. of Corrections, 942 P.2d 933, 939 (Utah 1997)(citing Searle Bros. v. Searle, 588 P.2d 689, 691 (Utah 1978)).

The Defendants maintain that Bovo’s wrongful arrest claim is barred by the Utah Court of Appeals’ ruling that the officers had probable cause to arrest him for the crimes charged.<sup>1</sup> Orem City v. Bovo, 76 P.3d 1170, 1173-74 (Utah Ct. App. 1993). That issue was decided by the trial judge and upheld upon review. Because Bovo did not appeal the ruling by the court of appeals, the Defendants argue that the court’s determination became a final judgment on the merits and bars the issue from further litigation.

Bovo, however, argues that the principles of *res judicata* do not apply to his wrongful arrest claim. In the original lawsuit, Orem City brought criminal charges against Bovo. Bovo

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<sup>1</sup> The court of appeals held that “the officers acted upon statements from credible witnesses that Defendant committed reckless driving and disorderly conduct. Thus the officers acted reasonably and Defendant’s arrest was proper.” Bovo, 76 P.3d at 1173.

asserts that because he is bringing a civil tort claim against the Defendants, the two are separate cases, and are therefore not subject to issue preclusion. In addition, Bovo claims that the present case involves additional and different parties than the original lawsuit. In his criminal case, only the City of Orem was listed as a party whereas in this civil suit, Bovo brings charges not only against the City, but also against the Orem City Police and its officers and the Orem City Prosecutor. Therefore, Bovo argues the probable cause issue is not precluded because there lacks privity between the parties in the two cases. Finally, Bovo contends that there was not a final judgment on the merits insofar as the Utah Court of Appeals found that the "trial court erred by denying [Bovo] a jury trial." Bovo argues "every finding was wiped clean from the trier of fact" as a result of the appeals court decision.

The court finds that the Utah Court of Appeals ruling bars Bovo from asserting a wrongful arrest claim against Orem City or its agents because it prevents him from proving that the officers lacked probable cause to arrest him, which is an essential element to establishing such a claim. Bovo appealed his trial court's conviction to the court of appeals arguing that (1) the trial court erred in denying him a jury trial, and (2) the officers did not have probable cause to arrest him. The appeals court ruled that the trial court improperly denied Bovo of a trial by jury and therefore reversed the trial court's decision. Bovo, 76 P.3d at 1173. However, the court of appeals also held that Bovo's arresting officers had probable cause to arrest him for reckless driving and disorderly conduct. Id. While Bovo was successful in arguing that he was denied a jury trial, the court of appeals conclusively affirmed the trial court's finding of probable cause, which Bovo did not appeal. Therefore, that ruling is made final and bars this court from relitigating the issue. See Laborers' International Union of North America v. Foster Wheeler

Corp., 26 F.3d 375, 397 n. 23 (3rd Cir. 1994) (“If an appeal is taken from only part of the judgment, the remaining part is *res judicata*.”).

Furthermore, the requirement of privity does not require that both cases involve identical parties. See e.g., Procter & Gamble Co. v. Haugen, 158 F.Supp.2d, 1286, 1297 (D. Utah 2001). Bovo was a party in the original lawsuit where the issue of probable cause was fully litigated and decided. Because the same issue of probable cause is now being asserted against Bovo, who was a party in the earlier litigation, the privity requirement is satisfied.

There is also no evidence indicating that Bovo was not provided with a full and fair opportunity to litigate the probable cause issue in the original suit. He appeared and argued before both the trial and appellate courts and submitted evidence on his behalf. Because Bovo failed to appeal the ruling finding probable cause, that ruling “result[s] in a final judgment between the same parties or their privies,” and Bovo is barred, as a matter of law, from asserting his wrongful arrest claim.

#### **Due Process**

Bovo claims Defendants violated his right to due process in arresting and prosecuting him. However, Bovo fails to state facts in his complaint to support a cause of action. Although Bovo was improperly denied a jury trial by the trial court, that decision was reversed by the court of appeals. See Bovo, 76 P.3d at 1172-73.

#### **Unlawful Detention**

Bovo claims he was unlawfully detained in violation of the Fourth Amendment. Bovo argues that the arresting police officer had neither articulable suspicion to pull him over nor probable cause to conduct a lawful arrest. Bovo argues that the police officers never actually

witnessed him commit any criminal behavior that would justify his detention on the charge of disorderly conduct.

However, officers may detain and question an individual they reasonably suspect has committed a crime. Terry v. Ohio, 392 U.S. 1 (1968). The officers had reasonable suspicion to detain and question Bovo. The police relied upon a complainants' telephone call reporting Bovo's reckless driving and disorderly conduct. It is well established that statements from eyewitnesses may be relied upon by police officers when making probable cause determinations. See U.S. v. Morrison, 58 Fed. Appx. 381, 383 (10th Cir. 2003). In addition, the Utah Court of Appeals already established that the Orem police officers had probable cause to arrest Bovo for both reckless driving and disorderly conduct. Bovo, 76 P.3d at 1173-74. The officers had both reasonable suspicion and probable cause to detain Bovo and question him.

#### **First Amendment**

Bovo fashions what appears to be a First Amendment challenge to Utah's disorderly conduct statute. Bovo argues that the statute ignores his right to express ideas or even "invite dispute" by mouthing threats to a driver with whom he had engaged in a traffic dispute. According to Bovo, the statute is overbroad because it criminalizes lawful speech and is not narrowly tailored to reach only unprotected activity. Bovo alleges, "The Orem Police officers routinely arrest citizens under the disorderly conduct statute. Whenever they intercept a message they do not like they simply arrest the individual. They use [the statute] as a vague guise to unlawfully arrest, as they did to Mr. Bovo." Bovo contends that his words and actions did not convey to the officers or others present at the scene an "imminent breach of peace" or "a direct



personal insult or an invitation to exchange in fisticuffs.” Bovo argues that the First Amendment protected his conduct and thus his conviction was not constitutionally supported.

Utah Code Annotated section 77-7-2 states, in relevant part:

- (1) A person is guilty of disorderly conduct if:
  - (a) he refuses to comply with the lawful order of the police to move from any public place, or knowingly creates a hazard or physically offensive condition, by any act which serves no legitimate purpose; or
  - (b) intending to cause a public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he:
    - (i) engages in fighting or in violent, tumultuous, or threatening behavior

The Court finds that Bovo’s arrest and prosecution for disorderly conduct did not violate his First Amendment rights. “[T]he unconditional phrasing of the First Amendment was not intended to protect every utterance.” Roth v. U.S., 354 U.S. 476, 483 (1957). “[A]reas of speech can, consistently with the First Amendment, be regulated because of their constitutionally proscribable content. . . .” R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, (1992). A statute will not be considered facially overbroad “merely because it is possible to conceive of a single impermissible application.” City of Houston, Tex. v. Hill, 482 U.S. 451, 458 (1987). Rather, the statute must proscribe “a substantial amount of constitutionally protected speech.” Id (internal quotation marks omitted). “[P]articularly where conduct and not merely the speech is involved, . . . the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep.” Broadrick v. Oklahoma, 413 U.S. 601, 631 (1973).

Utah’s disorderly conduct statute is clearly worded and does not specifically target speech. It is reasonably tailored to prohibit disorderly conduct. The fact that the statute creates a specific intent requirement significantly limits the statute’s breadth. The statute punishes only those who “*knowingly* create a hazardous or physically offensive condition” or “*intend* to cause

public inconvenience, annoyance, or alarm” by engaging in “fighting or in violent, tumultuous, or threatening behavior.” Utah Code Ann. § 77-7-2 (emphasis added). Thus, the statute specifically defines and limits the type of behavior that is proscribed.

The statute was not unconstitutionally applied to Bovo. Bovo was not, as he asserts, “prosecuted for the expression of just an idea;” he was prosecuted for making personal threats, driving dangerously, and making obscene gestures. The court of appeals described Bovo’s actions as “belligerent and aggressive.” Bovo was not prosecuted merely for mouthing the words “You’re going to pay” to the complainant; he was prosecuted for his overall boorish and threatening behavior, which does not qualify for First Amendment protection.

#### **Unlawful Search or Seizure**

Bovo claims he was unlawfully searched. However, Bovo fails to plead facts showing that he was searched by any of the Orem police officers. Bovo argues only that his arrest was unlawful. There is no evidence before the court that Bovo or his belongings were searched by the Defendants and the Utah Court of Appeals has already affirmed the legality of the police officers’ arrest. Therefore, his claim fails as a matter of law.

#### **Excessive Force**

Bovo claims the Defendants used excessive force against him by arguing that a “wrongful arrest is *per se* excessive force.” Bovo’s arresting officers, however, did have probable cause to arrest him and there are no facts showing that any force was used against Bovo by the police officers. The application of force is a prerequisite to a claim excessive force. See Graham v. Conner, 490 U.S. 386, 394 (1989). The fact that the police officers ordered Bovo out of his

vehicle, questioned, and then arrested him, does not amount to a sustainable claim of excessive force. Therefore, his claim fails as a matter of law.

### **Malicious Prosecution**

Bovo claims Defendants wrongfully prosecuted him. Bovo argues that he was prosecuted for disorderly conduct even though the City lacked evidence to pursue a conviction. Bovo claims that because the City lacked probable cause, it should have terminated its prosecution against him. Moreover, Bovo maintains that the Defendants initiated the prosecution against him primarily for vindictive purposes. To support his claim, Bovo argues that the City continued its prosecution against him even though he had never previously faced criminal charges and notwithstanding that he acted "courteous and respectful of the court, the clerks and the prosecutor." Bovo also claims that the City prosecutor was annoyed that he refused to plead guilty to the charges against him. Bovo alleges that the prosecutor left a "harassing" message on his voice mail and that, during trial, he "incessantly objected to every scrap of imperfection in [Bovo's] attempt to present his case." According to Bovo, the prosecutor "pursued [him] for sport and pleasure and not for the pursuit of justice."

In order "to succeed on [a claim of malicious prosecution], a plaintiff must establish a violation of the Fourth Amendment as well as the common-law elements of malicious prosecution." Haywood v. Nye, 999 F.Supp. 1451 (D. Utah 1998) (citing Taylor v. Meacham, 82 F.3d 1556, 1561 (10th Cir. 1996)). The elements of malicious prosecution include:

- (1) defendant initiated or procured the prosecution against an innocent plaintiff;
- (2) defendant did not have probable cause to initiate the prosecution;
- (3) defendant initiated the prosecution primarily for a purpose other than that of bringing an offender to justice; and
- (4) the prosecution terminated in favor of the plaintiff.

Id.

Bovo cannot escape the finding that the Defendants *did* have probable cause to initiate his prosecution. Bovo, 76 P.3d at 1173-74. Moreover, the evidence before the court demonstrates that Bovo was in fact driving in a manner that endangered others. According to the Utah Court of Appeals, Bovo behaved “belligerent[ly] and aggressive[ly]” and he “made an obscene gesture toward the Complainants and mouthed the threat, ‘You’ll pay for this.’” Bovo, 76 P.3d at 1171. Bovo cannot show that he was an innocent plaintiff or that the City lacked probable cause to initiate his prosecution. A prosecutor’s alleged irritable nature does not amount to a wrongful prosecution claim. To sustain a claim, the plaintiff must show that the prosecutor lacked probable cause to prosecute him. In this case, Bovo cannot, and therefore his wrongful prosecution claim fails as a matter of law.

#### **Municipal Liability**

Bovo claims Orem City is liable for the unlawful actions of its officers. Bovo alleges that the “Orem City Police routinely allows officers to criminalize noncriminal behavior.” Bovo suggests that an officer submitted a police log and findings of his arrest to the local newspaper without reviewing its accuracy. As a result, Bovo claims, the newspaper published erroneous allegations regarding the incident that lead to his arrest which placed Bovo in a false light. Thus, Bovo argues, because the municipality knew of the errors of its officers but refused to rectify the problem, the City should be held liable.

“A municipality may not be held liable where there was no underlying constitutional violation by any of its officers.” Hinton v. City of Elwood, Kansas, 997 F.2d 774, 782 (10th Cir. 1993). “To establish municipal liability, a plaintiff must show 1) the existence of a municipal

policy or custom, and 2) that there is a direct causal link between the policy or custom and the [constitutional] injury alleged.” Id.

Bovo, however, has failed to specify any facts giving rise to a bonafide constitutional violation by the City’s police officers. Bovo’s bare assertion that the City “routinely allows officers to criminalize noncriminal behavior” is insufficient to sustain a claim of municipal liability. In addition, there is no evidence before the court that the police report was erroneous or that it placed Bovo in false light or was otherwise injurious. No evidence supports Bovo’s claim that the police officer’s actions were improper. Therefore, Bovo’s claim for municipal liability fails to survive summary judgment.

#### **Supervisory Liability**

Bovo also asserts a claim for supervisory liability. Bovo argues that Lieutenant Doug Edwards and Director of Public Safety Michael Larsen “knew of the illegal behavior of their officers” and that instead of intervening they “complicated and compounded the problem.”

“A supervisor is not liable under section 1983 unless an affirmative link exists between the [constitutional] deprivation and either the supervisor’s personal participation, his exercise of control or direction, or his failure to supervise.” Meade v. Grubbs, 841 F.2d 1512, 1527 (10th Cir. 1988)(internal quotations omitted). A plaintiff must allege and prove that a supervisor actually knew and ratified the unconstitutional behavior or failed to intervene to prevent such misconduct.

Bovo does not explain what “illegal behavior” the police officers engaged in or how their supervisors “complicated or compounded that problem.” Nevertheless, Bovo’s claim of supervisor liability fails because he cannot establish a valid constitutional claim against the

police officers. The legality of Bovo's arrest has already been established. Because the arresting officers cannot be held liable for any constitutional violations surrounding Bovo's arrest, the officers' supervisors cannot be held liable either. Moreover, Bovo's complaint that the police caused to be published an inaccurate police report that placed him in false light is also insufficient to prevail on his claim. There are no facts that support such a proposition and even if Bovo was able to prove as much, it is not a constitutional claim. Therefore, supervisory liability does not be apply.

#### IV. CONCLUSION

For the reasons stated above, the court GRANTS Defendants' Motion for Summary Judgment.

**IT IS SO ORDERED.**

Dated this 23<sup>rd</sup> day of February, 2005.

A handwritten signature in cursive script, appearing to read "Dee Benson", written over a horizontal line.

United States District Judge  
Dee Benson

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00344

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Todd F. Bovo  
620 S SYCAMORE ST STE 5  
LANSING, MI 48933

Heather S. White, Esq.  
SNOW CHRISTENSEN & MARTINEAU  
10 EXCHANGE PLACE  
PO BOX 45000  
SALT LAKE CITY, UT 84145-5000  
EMAIL

Mr. Allan L Larson, Esq.  
SNOW CHRISTENSEN & MARTINEAU  
10 EXCHANGE PLACE  
PO BOX 45000  
SALT LAKE CITY, UT 84145-5000  
EMAIL

GEOFFREY T. LANDWARD - 9847  
Assistant Utah Attorney General  
MARK L. SHURTLEFF - 4666  
Utah Attorney General  
160 East 300 South, Sixth Floor  
P.O. Box 140856  
Salt Lake City, UT 84114-0856  
Telephone: (801) 366-0100

RECEIVED CLERK  
U.S. DISTRICT COURT

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

---

JANET S. JONES,

Plaintiff,

vs.

SALT LAKE COMMUNITY COLLEGE,  
DAVID BURKE and KEVIN SPRAGUE,  
individuals, and JOHN DOES 1-10,

Defendants.

**ORDER GRANTING DEFENDANT  
SALT LAKE COMMUNITY  
COLLEGE'S MOTION FOR A TEN-  
DAY EXTENSION OF TIME IN  
WHICH TO RESPOND TO  
PLAINTIFF'S COMPLAINT**

Case No. 2:04CV01183 TS

Judge: Ted Stewart

---

Based upon Defendant Salt Lake Community College's Motion for a Ten-day Extension of Time in Which to Respond to Plaintiff's Complaint, the Clerk of the Court enters the following order:


Pursuant to D. U. Civ. R. 77-2(a)(2), Defendant Salt Lake Community College's Motion for a Ten-day Extension of Time in Which to Respond to Plaintiff's Complaint is GRANTED.

10



Defendant Salt Lake Community College shall file a response to the Plaintiff's Complaint on or before March 10, 2005.

DATED this 24<sup>th</sup> day of February, 2005.

  
~~MARKUS B. ZIMMER~~  
~~Clerk of the Court~~  
~~LOUISE YORK~~  
~~Chief Deputy Clerk of the Court~~  
Ted Stewart  
U.S. District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of February, 2005, I caused to be served by U.S. mail a true and correct copy of the foregoing **ORDER GRANTING DEFENDANT SALT LAKE COMMUNITY COLLEGE'S MOTION FOR A TEN-DAY EXTENSION OF TIME IN WHICH TO RESPOND TO PLAINTIFF'S COMPLAINT** to the following:

Mel S. Martin  
Russell D. Harris  
Mel S. Martin, P.C.  
5282 South Commerce Drive, #D292  
Murray, UT 84107

  
\_\_\_\_\_

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-01183

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mel S. Martin, Esq.  
5282 S COMMERCE DR STE D292  
MURRAY, UT 84107  
JFAX 9,2847313

Geoffrey T. Landward, Esq.  
UTAH ATTORNEY GENERAL'S OFFICE  
LITIGATION UNIT  
160 E 300 S 6TH FL  
PO BOX 140856  
SALT LAKE CITY, UT 84114-0856  
EMAIL

FILED  
CLERK OF DISTRICT COURT

131124 / 7 3

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RECEIVED CLERK

131124 / 7 3

U.S. DISTRICT COURT

Roger H. Hoole 5089  
Heather E. Morrison 6945  
HOOLE & KING, L.C.  
4276 South Highland Drive  
Salt Lake City, Utah 84124  
Telephone: (801) 272-7556  
Facsimile: (801) 272-7557

Attorneys for Plaintiff, David F. Foster

---

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

---

DAVID F. FOSTER,  
  
Plaintiff,

v.

THOMSON DELAWARE HOLDINGS,  
INC. and THOMSON LEARNING INC.,  
f.k.a., PROMETRIC, INC.,  
  
Defendants.

ORDER OF DISMISSAL  
WITH PREJUDICE

Case No: 2:03-CV-00333

Judge Ted Stewart

Magistrate Judge Samuel Alba

---

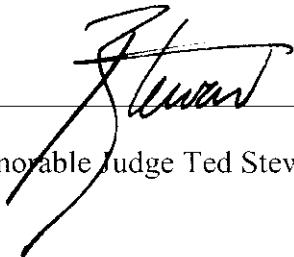
Based upon the Stipulation and Motion of Plaintiff David F. Foster and Defendants Thomson Delaware Holdings, Inc. and Thomson Learning, Inc., f.k.a. Prometric, Inc. and for good cause appearing, IT IS HEREBY ORDERED that this action and all causes of action alleged by Plaintiff against Defendants are hereby dismissed with prejudice, each party to bear



their own costs and attorneys' fees.

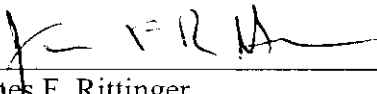
DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

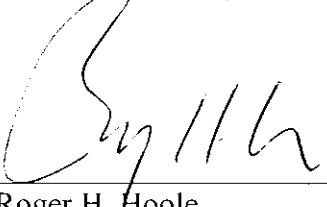
  
\_\_\_\_\_  
Honorable Judge Ted Stewart

APPROVED AS TO FORM:

SATTERLEE STEPHENS  
BURKE & BURKE LLP

  
\_\_\_\_\_  
James F. Rittinger  
Attorneys for Defendants  
Dated this 15<sup>th</sup> day of February, 2005.

HOOLE & KING, L.C.

  
\_\_\_\_\_  
Roger H. Hoole  
Attorneys for Plaintiff  
Dated this 22<sup>nd</sup> day of February, 2005.

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00333

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Bentley J. Tolk, Esq.  
PARR WADDOUPS BROWN GEE & LOVELESS  
185 S STATE ST STE 1300  
PO BOX 11019  
SALT LAKE CITY, UT 84147  
EMAIL

James F. Rittinger, Esq.  
SATTERLEE STEPHENS BURKE & BURKE  
230 PARK AVE  
NEW YORK, NY 10169  
EMAIL

Mr. Roger H. Hoole, Esq.  
HOOLE & KING LC  
4276 HIGHLAND DR  
SALT LAKE CITY, UT 84124  
EMAIL

CLERK

2005 FEB 18 P 5:40

Richard D. Clayton (#0678)  
Reha Deal (#8487)  
HOLLAND & HART LLP  
60 East South Temple, Suite 2000  
Salt Lake City, Utah 84111-1031  
Telephone: (801) 595-7800  
Facsimile: (801) 364-9124

*Attorneys for Ramp International, Inc.  
and William A. Poce*

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

PT BUKAKA CORPORINDO, an Indonesian  
corporation derivatively and on behalf of RAMP  
International, Inc., a Utah corporation,

Plaintiff,

v.

WILLIAM A. POCE,

Defendant, and

RAMP INTERNATIONAL, INC.,

Nominal Defendant.

---

PT BUKAKA TEKNIK UTAMA,

Plaintiff,

v.

RAMP INTERNATIONAL, INC., and  
WILLIAM A. POCE,

Defendants.

~~PROPOSED~~ ORDER (1)  
GRANTING EXTENSION OF TIME  
FOR DEFENDANT POCE TO FILE  
REPLY MEMORANDUM IN  
SUPPORT OF MOTION  
TO DISMISS ALL CLAIMS, AND  
(2) VACATING AND RESETTling  
HEARING ON MOTION TO  
DISMISS ALL CLAIMS

Civil No. 2:04CV00543TS

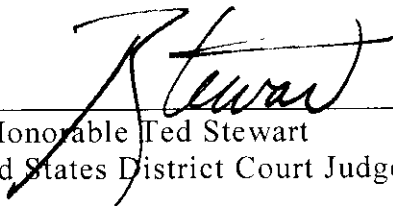
Judge Ted Stewart

LD

For the reasons set forth in the parties joint motion and for good cause shown, it is

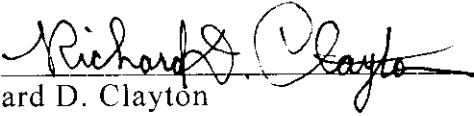
HEREBY ORDERED THAT Defendant William A. Poce may have until Monday, March 21, 2005, in which to file a Reply Memorandum in Support of his Motion to Dismiss All Claims in this matter; and FURTHER ORDERED that the hearing on the Motion to Dismiss All Claims currently set in this matter for 9:00 a.m. on March 4, 2005 is hereby vacated and reset to April 7, 2005 at 2:30 p.m.

DATED this 24<sup>th</sup> day of February, 2005.

  
\_\_\_\_\_  
The Honorable Ted Stewart  
United States District Court Judge

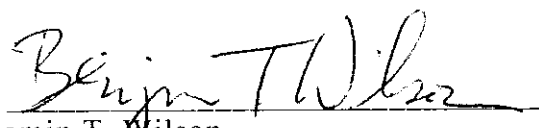
DATED this 18<sup>th</sup> day of February, 2005.

HOLLAND & HART LLP

By:   
\_\_\_\_\_  
Richard D. Clayton  
Reha Deal  
*Attorneys for William A. Poce*

DATED this 18<sup>th</sup> day of February, 2005.

SMITH HARTVIGSEN PLLC

By:   
\_\_\_\_\_  
Benjamin T. Wilson  
*Attorneys for Plaintiffs*



### **CERTIFICATE OF SERVICE**

I hereby certify that on this 18 day of February, 2005, I caused a true and correct copy of the foregoing document(s) to be served on the parties involved, listed below, addressed as follows:

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Fax

Benjamin T. Wilson  
D. Scott Crook  
Brent N. Bateman  
SMITH HARTVIGSEN PLLC  
650 Parkside Tower  
215 South State Street  
Salt Lake City, Utah 84111

Steven R. Skirvin  
DION-KINDEM & CROCKETT  
21271 Burbank Blvd., Suite 100  
Woodland Hills, CA 91367

  
\_\_\_\_\_

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cv-00543

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Benjamin T. Wilson, Esq.  
SMITH HARTVIGSEN  
215 S STATE STE 650  
SALT LAKE CITY, UT 84111  
EMAIL

Mr. Richard D. Clayton, Esq.  
HOLLAND & HART  
60 E SOUTH TEMPLE STE 2000  
SALT LAKE CITY, UT 84111-1031  
EMAIL

Steven R. Skirvin, Esq.  
DION KINDEM & CROCKETT  
21271 BURBANK BLVD STE 100  
WOODLAND HILLS, CA 91367  
EMAIL

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

GEORGE SHELBY,  
Plaintiff,

vs.

FOUR CORNERS PRECISION MFG.  
CO. d/b/a A-1 DISPOSAL,  
Defendant.

ORDER DENYING MOTION TO  
SUBMIT AN OVERLENGTH  
MEMORANDUM AS MOOT

Case No. 2:02-CV-696 TS

This matter is before the court on Plaintiff's Motion to Submit an Overlength Memorandum in Response and Opposition to Defendants' Motion for Summary Judgment. DUCivR 56-1(b) provides that a memorandum opposing a Motion for Summary Judgment shall not exceed twenty-five pages. The Memorandum at issue is twelve pages. It is therefore

ORDERED that Plaintiff's Motion to Submit an Overlength Memorandum in Response and Opposition to Defendants' Motion for Summary Judgment is DENIED as MOOT because the memorandum is not overlength.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge



jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-00696

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Donald J Winder, Esq.  
WINDER & HASLAM  
175 W 200 S STE 4000  
PO BOX 2668  
SALT LAKE CITY, UT 84101  
EMAIL

Mr. F. Mark Hansen, Esq.  
431 N 1300 W  
SALT LAKE CITY, UT 84116  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT  
FEB 24 P 12:52  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

# United States District Court

Central Division for the District of Utah

Brannick Larsen

## JUDGMENT IN A CIVIL CASE

v.

Intermountain Power Service  
Corporation

Case Number: 2:03cv587 BSJ

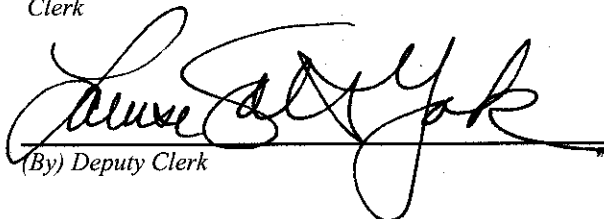
This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

that judgment be entered in favor of the defendant and plaintiff's cause of action is dismissed with prejudice and on the merits. Each party is to bear its own costs and attorney fees.

February 24, 2005  
Date

Markus B. Zimmer  
Clerk

  
(By) Deputy Clerk

46

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00587

True and correct copies of the attached were either mailed, faxed or e-mailed  
by the clerk to the following:

Scott M. Petersen, Esq.  
FABIAN & CLENDENIN  
215 S STATE STE 1200  
PO BOX 510210  
SALT LAKE CITY, UT 84151  
EMAIL

David L. Cooley, Esq.  
31 FEDERAL AVE  
LOGAN, UT 84321  
JFAX 8,435,7523556

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 24 P 12:21

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

DY:  
DEPUTY CLERK

DIRECTV, INC.,

Plaintiff,

vs.

JASON ANDERSON,

Defendant.

ORDER GRANTING STIPULATED  
MOTION TO DISMISS

Case No. 1:03-CV-136 TS

Based upon the Stipulated Motion for Dismissal of Claims Against Defendant Jason Anderson, it is therefore

ORDERED that Stipulated Motion for Dismissal of Claims Against Defendant Jason Anderson is GRANTED and the claims against Jason Anderson are dismissed with prejudice and without attorney fees or costs.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

13

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:03-cv-00136

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Glenn R. Bronson, Esq.  
PRINCE YEATES & GELDZAHLER  
175 E 400 S STE 900  
SALT LAKE CITY, UT 84111  
EMAIL

Mr. Stephen W Farr, Esq.  
FARR KAUFMAN SULLIVAN  
JENSEN MEDSKER NICHOLS CONKLIN & PERKINS  
205 26TH ST STE 34  
OGDEN, UT 84401  
JFAX 8,801,3924125



FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 24 P 12:21

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

DY:  
DEPUTY CLERK

DIRECTV, INC.,

Plaintiff,

vs.

JASON ANDERSON,

Defendant.

ORDER GRANTING STIPULATED  
MOTION TO DISMISS

Case No. 1:03-CV-136 TS

Based upon the Stipulated Motion for Dismissal of Claims Against Defendant Jason Anderson, it is therefore

ORDERED that Stipulated Motion for Dismissal of Claims Against Defendant Jason Anderson is GRANTED and the claims against Jason Anderson are dismissed with prejudice and without attorney fees or costs.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

13

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:03-cv-00136

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Glenn R. Bronson, Esq.  
PRINCE YEATES & GELDZAHLER  
175 E 400 S STE 900  
SALT LAKE CITY, UT 84111  
EMAIL

Mr. Stephen W Farr, Esq.  
FARR KAUFMAN SULLIVAN  
JENSEN MEDSKER NICHOLS CONKLIN & PERKINS  
205 26TH ST STE 34  
OGDEN, UT 84401  
JFAX 8,801,3924125

FILED  
CLERK, U.S. DISTRICT COURT  
FEB 24 A 10:09  
DISTRICT OF UTAH

# United States District Court District of Utah

UNITED STATES OF AMERICA

vs.

Gary Lee Chamberlin

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 2:04-CR-00486-001-TC

Plaintiff Attorney: John Huber, SAUSA

Defendant Attorney: Henri Sisneros, Esq.

Atty: CJA \_\_\_ Ret \_\_\_ FPD ☒

Defendant's Soc. Sec. No.: \_\_\_\_\_

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 11644-081

Defendant's Residence Address: \_\_\_\_\_

Country \_\_\_\_\_

02/23/2005

Date of Imposition of Sentence

Defendant's Mailing Address: \_\_\_\_\_

same

Country \_\_\_\_\_

### THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 12/13/2004 Verdict \_\_\_\_\_

### Indictment

### Title & Section

18 USC § 922(g)(1)

### Nature of Offense

Felon in Possession of a Firearm

### Count Number(s)

I

Entered on docket

2:24:05 by:

*[Signature]*  
Deputy Clerk

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **12 months and one day**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months**

- ☐ The defendant is placed on Probation for a period of \_\_\_\_\_  
The defendant shall not illegally possess a controlled substance.

31

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

#### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall maintain full-time verifiable employment or participate in academic or vocational development throughout the term of supervision as deemed appropriate by the probation office
2. The defendant will submit to drug/alcohol testing as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use or excessive and/or illegal consumption of alcohol such as alcohol-related criminal or traffic offenses, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation Office and shall not possess or consume alcohol during the course of treatment.
3. The defendant shall not use or possess alcohol.
4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
5. The defendant shall submit to the collection of a DNA sample at the direction of the US Bureau of Prisons or the USPO.

### CRIMINAL MONETARY PENALTIES

#### FINE

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
No fine imposed.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:  
\_\_\_\_\_

#### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--------------------------------------

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

- ☐ Restitution is payable as follows:
- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other:  
\_\_\_\_\_

- ☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_

pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

### DEPARTURE

The Court grant the Motion for Departure pursuant to 18 U.S.C. 3553(c)(2), the Court enters its reasons for departure:

See attached finding.

### RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility close to the state of Utah.

### CUSTODY/SURRENDER

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☒ The defendant shall report to the institution designated by the Bureau of Prisons by noon Institution's local time, on 3/23/05.

DATE: \_\_\_\_\_

*see final page*  
\_\_\_\_\_  
Tena Campbell  
United States District Judge

Defendant: Gary Lee Chamberlin  
Case Number: 2:04-CR-00486-001-TC

Page 5 of 5

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

I have imposed a sentence of twelve months and one day on Mr. Chamberlin. I imposed this sentence after careful consideration of the guideline range. However, under the factors listed in 18 U.S.C. § 3553, I conclude that a sentence below the guideline range is warranted, primarily because the felony conviction listed in paragraph 23 of the Presentence Report (Felony Sex Abuse of a Child) has now been reduced to a misdemeanor.

The court recognizes that for conviction of a violation of 18 U.S.C. § 922 (g)(1), there is no requirement that the government prove that the defendant know that he is prohibited from possession of a firearm. But here, the government candidly admitted that had Mr. Chamberlin sought and obtained the reduction of his felony offense before he was found in possession of the weapons, the government would not have brought this charge.

Accordingly, I believe that a sentence of twelve months and one day is a reasonable sentence under the statute.

*Jenna Campbell*  
2-23-2005



alt

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00486

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Jonathan D. Yeates, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Henri R. Sisneros, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
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SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

# United States District Court District of Utah

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 P 2:49  
DEPUTY CLERK

UNITED STATES OF AMERICA

vs.

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

**Marcos Demetrio Hernandez-Juarez**

aka Marcos Hernandez

Case Number: **2:04-CR-00528-001-TC**

Plaintiff Attorney: **Karen Fojtek, AUSA**

Defendant Attorney: **Rob Hunt, Esq.**

Atty: CJA \_\_\_ Ret \_\_\_ FPD **X**

Defendant's Soc. Sec. No.: **None**

Defendant's Date of Birth: \_\_\_\_\_

**02/22/05**

Date of Imposition of Sentence

Defendant's USM No.: **11732-081**

Defendant's Residence Address:

Defendant's Mailing Address:

**Mexico**

**same**

Country \_\_\_\_\_

Country \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

COP **12/13/2004** Verdict \_\_\_\_\_

**I of indictment**

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

**Title & Section**

**8 USC § 1326**

**Nature of Offense**

**Re-Entry of Previously Removed Alien**

**Count**

**Number(s)**

**I**

Entered on docket

**2-24-05** by:

*[Signature]*  
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

**12 months**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

**36 months**

☐ The defendant is placed on Probation for a period of \_\_\_\_\_

The defendant shall not illegally possess a controlled substance.

**19**

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☒ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not re-enter the United States illegally.
2. The defendant shall submit to the collection of a DNA sample at the direction of the US Bureau of Prisons or the USPO.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
No fine imposed.

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

#### **RESTITUTION**

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

#### PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

#### RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

\_\_\_\_\_

Defendant: Marcos Demetrio Hernandez-Juarez  
Case Number: 2:04-CR-00528-001-TC

Page 4 of 5

**CUSTODY/SURRENDER**

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_<sup>or</sup> Institution's local time, on \_\_\_\_\_.

DATE: 2-23-2007

Tena Campbell  
Tena Campbell  
United States District Judge

Defendant: Marcos Demetrio Hernandez-Juarez  
Case Number: 2:04-CR-00528-001-TC

Page 5 of 5

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00528

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. William L. Nixon, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Robert K. Hunt, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

03 03 24 P 2 31

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

RIDGEWAY ,

Plaintiff,

vs.

FLEET CREDIT CARD SVC, et al,

Defendants.

TRIAL ORDER

Civil No. 2:03-CV-00858

The final pretrial conference in this matter is scheduled for Tuesday, May 10, 2005, at 3:00 p.m.

This case is set for a 5-day trial to begin on Monday, May 23, 2005, at 8:30 a.m. The attorneys are expected to appear in court at 8:00 a.m. on the first day of trial for a brief pre-trial meeting.

Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

**2. Pretrial Order.**

At the pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1 and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

183



In addition to the provisions in the final pretrial order thus called for, the following special provisions will apply:

(a) The statement of uncontroverted facts called for in Section 3 of the General Form of the Pretrial Order shall be in narrative form. Such facts shall be considered substantive evidence in the case and shall be marked as Exhibit 1. Upon commencement of the trial, Exhibit 1 shall be read into evidence. Except as set forth in Exhibit 1, no further evidence as to the agreed facts may be entered into the record at trial.

(b) In reference to Section 7 of the General Form of the Pretrial Order, regarding all witnesses that propose to be expert witnesses, the parties are directed to append to Exhibit 1 copies of the curriculum vitae of each such expert. Absent specific leave of Court, the expert may not present more than five (5) minutes of professional qualification. It is anticipated that in most cases, the parties will stipulate to expertise, although in appropriate cases, voir dire or cross-examination of an expert's qualification may be permitted; said examination may go beyond the direct oral testimony as to qualification.

### **3. Jury Instructions**

The court has adopted its own standard general jury instructions, copies of which may be obtained from the court prior to trial. The procedure for submitting proposed jury instructions is as follows:

(a) The parties must serve their proposed jury instructions on each other **at least ten business days before trial**. The parties should then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, they may submit separately those instructions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions for the case.

(c) The joint proposed instructions (along with the proposed instructions upon which the parties have been unable to agree) must be filed with the court **at least five business days before trial**. All proposed jury instructions must be in the following format:

(i) An original and one copy of each instruction, labeled and numbered at the top center of the page to identify the party submitting the

instruction (e.g., "Joint Instruction No. 1" or "Plaintiff's Instruction No. 1"), and including citation to the authority that forms the basis for it.

(ii) A 3.5" high density computer diskette containing the proposed instructions (and any proposed special verdict form), without citation to authority, formatted for Wordperfect 6.1 through 8.0. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(d) Each party should file its objections, if any, to jury instructions proposed by any other party **no later than two business days before trial**. Any such objections must recite the proposed instruction in its entirety and specifically highlight the objectionable language contained therein. The objection should contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit, in conformity with paragraph 3(c)(i) - (ii) above, an alternative instruction covering the pertinent subject matter or principle of law. Any party may, if it chooses, submit a brief written reply in support of its proposed instructions **on the day of trial**.

(e) All instructions should be short, concise, understandable, and neutral statements of law. Argumentative instructions are improper and will not be given.

(f) Modified versions of statutory or other form jury instructions (e.g., Federal Jury Practice and Instructions) are acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

#### **4. Special Verdict Form**

The procedure outlined for proposed jury instructions will also apply to special verdict forms.

#### **5. Requests for Voir Dire Examination of the Venire.**

The parties may request that, in addition to its usual questions, the court ask additional specific questions to the jury panel. Any such request should be submitted in writing to the court and served upon opposing counsel **at least ten business days before trial**.

## **6. Findings of Fact and Conclusions of Law**

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Ms. Patti Walker, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

As with proposed jury instructions and special verdict forms, the proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and on a 3.5" high density computer diskette formatted for WordPerfect 6.1 through 8.0.

## **7. Trial Briefs**

Each party should file a Trial Brief no later than five business days before trial. Such brief shall include a list of all witnesses to be called and a short statement as to the substance of that witness' testimony.

## **8. Motions in Limine**

All motions in limine are to be filed with the court at **least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

## **9. Exhibit Lists/Marking Exhibits**

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley, at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

## **10. In Case of Settlement**

Pursuant to DUCivR 41-1, the court will tax all jury costs incurred as a result of the parties' failure to give the court adequate notice of settlement. Leaving a message on an

answering machine or sending a notice by fax is not considered sufficient notice to the court. If the case is settled, counsel must advise the jury administrator or a member of the court's staff by means of a personal visit or by person-to-person telephonic communication.

## **11. Courtroom Conduct**

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

- (a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.
- (b) Stand as court is opened, recessed or adjourned.
- (c) Stand when the jury enters or retires from the courtroom.
- (d) Stand when addressing, or being addressed by, the court.
- (e) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."
- (f) Sidebar conferences are discouraged. Most matters requiring argument should be raised during recess. Please plan accordingly.
- (g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.
- (h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

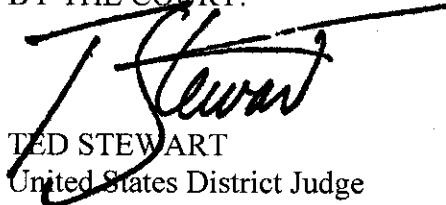
(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Offers of, or requests for, a stipulation shall be made out of the hearing of the jury.

(l) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 24th day of February, 2005.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Ted Stewart", is written over the printed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

TED STEWART  
United States District Judge

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cv-00858

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Craig Carman, Esq.  
311 S STATE ST STE 380  
SALT LAKE CITY, UT 84111  
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SNELL & WILMER LLP  
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Brenton S. Bean, Esq.  
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Paul L. Myers, Esq.  
STRASBURGER & PRICE LLP  
901 MAIN ST STE 4300  
DALLAS, TX 75202

FILED  
CLERK, U.S. DISTRICT COURT

**United States District Court**  
**District of Utah**

2005 FEB 24 A 10:21

DISTRICT OF UTAH

**UNITED STATES OF AMERICA**

vs.

(For Revocation of Probation or Supervised Release)  
(For Offenses Committed On or After November 1, 1987)

**Cesar Cala-Garcia**  
aka Cesar Garcia-Cala  
aka Tinta Garcia  
aka Cristan Cala-Garcia

Case Number: **2:99-CR-00434-001 DAK**

Plaintiff Attorney: **Dustin Pead, AUSA**

Defendant Attorney: **Viviana Ramirez**

Atty: CJA \_\_\_ Ret \_\_\_ FPD ☒

Defendant's Soc. Sec. No.: **None**

Defendant's Date of Birth:

**February 23, 2005**

Date of Imposition of Sentence

Defendant's USM No.: **07630-081**

Defendant's Residence Address:

Defendant's Mailing Address:

**None**

**None**

Country **Mexico**

Country **Mexico**

THE DEFENDANT:

COP **12/10/04** Verdict

☒ admitted to allegation(s)

**1 of the Petition.**

☐ pleaded nolo contendere to allegation(s)  
which was accepted by the court.

☐ was found guilty as to allegation(s)

**Violation Number**

**Nature of Violation**

**Date Violation Occured**

**1**

Illegally re-entered the United States of America and  
was found in Salt Lake County, Utah

**Sept. 18, 2004**

Entered on docket

**2-24-05** by:

*R. King*  
Deputy Clerk

☐ The defendant has been found not guilty on count(s)

☐ Count(s) (is)(are) dismissed on the motion of the United States.

**SENTENCE**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **6 months, to run concurrently with the sentence imposed in case 2:04-CR-00670-001 DAK.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of

☐ The defendant is placed on Probation for a period of  
The defendant shall not illegally possess a controlled substance.

**42**



*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
**No Fine Imposed**

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
-

## RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

## SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ \_\_\_\_\_, payable as follows:

☐ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

## PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.

Defendant: Cesar Cala-Garcia  
Case Number: 2:99-CR-00434-001 DAK

Page 4 of 5

### RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**That the defendant be sent to FCI Safford AZ or FCI Lompoc CA to facilitate family visitation. The Court further recommends that the defendant receive drug abuse treatment while incarcerated.**

### CUSTODY/SURRENDER

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE: February 24, 2005

  
Dale A. Kimball  
United States District Judge

Defendant: Cesar Cala-Garcia  
Case Number: 2:99-CR-00434-001 DAK

Page 5 of 5

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:99-cr-00434

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

Mr. Mark K Vincent, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Julie George, Esq.  
PO BOX 112338  
29 S STATE STE 7  
SALT LAKE CITY, UT 84147  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

# United States District Court District of Utah

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 24 A 10:27

DISTRICT OF UTAH

UNITED STATES OF AMERICA

vs.

## JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

DEPUTY CLERK

Cesar Garcia-Cala

aka Tinta Garcia

aka Cristan Cala-Garcia

Case Number: 2:04-CR-00670-001 DAK

Plaintiff Attorney: Dustin Pead, AUSA

Defendant Attorney: Viviana Ramirez

Atty: CJA \_\_\_ Ret \_\_\_ FPD ☒

Defendant's Soc. Sec. No.: None

Defendant's Date of Birth: \_\_\_\_\_

Defendant's USM No.: 07630-081

Defendant's Residence Address: \_\_\_\_\_

None

Country Mexico

February 23, 2005

Date of Imposition of Sentence

Defendant's Mailing Address: \_\_\_\_\_

None

Country \_\_\_\_\_

THE DEFENDANT:

☒ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

COP 12/10/04 Verdict \_\_\_\_\_

1 of the Indictment.

Title & Section

8 U.S.C. §1326

Nature of Offense

Re-entry of Previously Removed Alien

Count

Number(s)

1

Entered on docket

2-24-05 by:

*B. King*  
Deputy Clerk

- ☐ The defendant has been found not guilty on count(s) \_\_\_\_\_
- ☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

### SENTENCE

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of **37 months.**

Upon release from confinement, the defendant shall be placed on supervised release for a term of **36 months.**

- ☐ The defendant is placed on Probation for a period of \_\_\_\_\_
- The defendant shall not illegally possess a controlled substance.

18

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as directed by the probation officer.

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE/PROBATION**

In addition to all Standard Conditions of (Supervised Release or Probation) set forth in PROBATION FORM 7A, the following Special Conditions are imposed: (see attachment if necessary)

1. The defendant shall not illegally re-enter the USA. If the defendant returns to the USA during the period of supervision, he is instructed to contact the U.S. Probation Office in the District of Utah within 72 hours of arrival in the USA.
2. The defendant shall submit to the collection of a DNA sample at the direction of the Bureau of Prisons or the U.S. Probation Office.

### **CRIMINAL MONETARY PENALTIES**

#### **FINE**

The defendant shall pay a fine in the amount of \$ \_\_\_\_\_, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.

☒ other:

**No Fine Imposed**

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).

- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), **it is ordered that:**

- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- \_\_\_\_\_

## RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5)(not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

## SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 100.00, payable as follows:

☒ forthwith.

☐ \_\_\_\_\_

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid

## PRESENTENCE REPORT/OBJECTIONS

The court adopts the factual findings and guidelines application recommended in the presentence report except as otherwise stated in open court.



Defendant: Cesar Garcia-Cala  
Case Number: 2:04-CR-00670-001 DAK

Page 4 of 5

### RECOMMENDATION

☒ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

**That the defendant be sent to either FCI Safford AZ or FCI Lompoc CA to facilitate family visitation. The Court further recommends that the defendant receive drug abuse treatment while incarcerated.**

---

### CUSTODY/SURRENDER

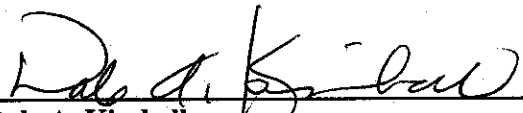
☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district at \_\_\_\_\_ on \_\_\_\_\_.

☐ The defendant shall report to the institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

February 24, 2005

  
\_\_\_\_\_  
Dale A. Kimball  
United States District Judge

Defendant: Cesar Garcia-Cala  
Case Number: 2:04-CR-00670-001 DAK

Page 5 of 5

**RETURN**

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00670

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT

DEIRDRE A. GORMAN (#3651)  
Attorney for Defendant  
205 26<sup>th</sup> Street, Suite 32  
Bamberger Square Building  
Ogden, Utah 84401  
Telephone: (801) 394-9700  
Facsimile: (801) 621-4770

FEB 24 P 2 31

DEIRDRE A. GORMAN

DEPUTY CLERK

RECEIVED CLERK

FEB 18 2005

U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

---

UNITED STATES OF AMERICA,	/	<b>ORDER CONTINUING</b>
	/	<b>CHANGE OF PLEA DATE</b>
Plaintiff,	/	
vs.	/	
JEFFREY VIERNES,	/	
	/	Case No. 2:03-CR-0883TS
Defendant.	/	


---

BASED UPON the Motion to Continue Change of Plea Hearing filed by Defendant's counsel pursuant to 18 U.S.C. §3161(8)(b)(I), and good cause appearing,

IT IS HEREBY ORDERED that the change of plea date of February 8, 2005 be and is hereby continued to Monday, February 28, 2005 at 11:00 a.m.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Court Judge

74

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing **ORDER CONTINUING CHANGE OF PLEA HEARING (unexecuted)**, to the following, postage prepaid, this 14<sup>th</sup> day of February, 2005:

Mark K. Vincent  
Assistant United States Attorney  
185 South State Street, #400  
Salt Lake City, Utah 84111



Secretary

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:03-cr-00883

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. Mark K Vincent, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Ms. Deirdre A Gorman, Esq.  
205 26TH ST STE 32  
OGDEN, UT 84401  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

FEB 24 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

TOOLS, et al.,

Plaintiffs,

vs.

RED ROCK CANYON SCHOOL,

Defendant.

ORDER OF REFERENCE

Civil No. 2:05-CV-00155 TS

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this Court, the above entitled case is referred to Magistrate Judge Samuel Alba. The magistrate judge is directed to hear and determine any nondispositive pretrial matters pending before the Court.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
TED STEWART  
United States District Judge

2

jmr

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00155

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Mr. R. Dennis Ickes, Esq.  
4257 PANORAMA DR  
SALT LAKE CITY, UT 84124  
EMAIL



FEB 24 2005

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

MARKUS B. ZIMMER, CLERK  
BY                      DEPUTY CLERK

DOMINION NUTRITION,

Plaintiff,

vs.

RAYMOND CESCA,

Defendant.


ORDER OF REFERENCE

Civil No. 2:05-CV-00143 TS

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge David Nuffer. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 24<sup>th</sup> day of February, 2005.

BY THE COURT:

  
TED STEWART  
United States District Judge

4

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00143

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lawrence D. Graham, Esq.  
BLACK LOWE & GRAHAM  
701 FIFTH AVE STE 4800  
SEATTLE, WA 98104

Lorin David Griffin, Esq.  
WORKMAN NYDEGGER  
1000 EAGLE GATE TOWER  
60 E S TEMPLE  
SALT LAKE CITY, UT 84111  
EMAIL

Joseph Kent Mathewson, Esq.  
DONOHUE BROWN MATHEWSON & SMYTH  
140 S DEARBORN ST STE 700  
CHICAGO, IL 60603

FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 P 4:19

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

LUIS CARLOS LEON-VENCES

Defendant(s),

PRETRIAL ORDER PURSUANT

TO RULE 17.1 F.R.Cr.P.

Case No. 2:05CR94DAK

The above-entitled action came on for pretrial conference February 22, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 4/29/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Dale A. Kimball by 4/28/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes   X   No       

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

9

3. Pretrial motions are to be filed by: 3/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. If so, plea negotiations should be completed by 4/15/05. If negotiations are not completed for a plea by the date set, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Dale A. Kimball's clerk before trial.

8. Other order and directions are: Discovery has been provided.

9. Interpreter Needed: Yes X No     Language Spanish

DATED this 22 day of February, 2005.

BY THE COURT:



---

David Nuffer  
Magistrate Judge

blk

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00094

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

US Probation  
DISTRICT OF UTAH  
,  
EMAIL

RONALD J. YENGICH (#3580)  
YENGICH, RICH & XAIZ  
Attorneys for Defendant  
175 East 400 South, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 355-0320

FILED  
CLERK, U.S. DISTRICT COURT  
2005 FEB 23 P 6:36  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

RECEIVED CLERK  
FEB 23 2005  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES WINFIELD,

Defendant.

ORDER OF CONTINUANCE

Case No. 04 CR 548

Judge Dale A. Kimball

BASED upon motion of counsel, and with good cause having been shown;

IT IS HEREBY ORDERED that the Jury Trial date in the above-entitled matter,  
currently set to begin the 28<sup>th</sup> day of February and the 1<sup>st</sup> day of March, 2005, until the  
2<sup>nd</sup> day of May, 2005, at 8:30 a.m., before Judge Dale A. Kimball.

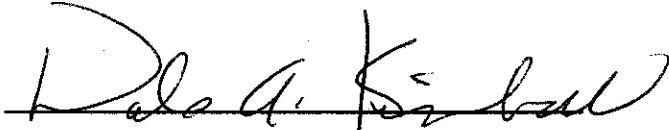
The Court finds, pursuant to 18 U.S.C. § 3161(h)(8)(B)(iv), that failure to grant a  
continuance of said trial would deny defense counsel the reasonable time necessary for effective  
preparation, taking into account the exercise of due diligence.

The Court further finds that the period of time involved in a continuance is  
excludable from the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(8)(A) based on the fact  
that the ends of justice served by granting the continuance outweigh the best interest of the public  
and the defendants in a speedy trial.

24

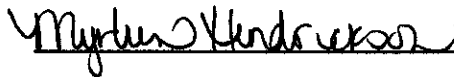
SIGNED BY MY HAND this 23<sup>rd</sup> day of February, 2005.

BY THE COURT:

  
HONORABLE DALE A. KIMBALL  
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing Order of Continuance this 22<sup>nd</sup> day of February, 2005, on the case styled *USA vs. James Winfield*, to Paul Amann at the Attorney General's Office located at 5272 College Drive, Suite 200, Salt Lake City, Utah 84123

  
\_\_\_\_\_

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00548

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Michele M. Christiansen, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Paul G. Amann, Esq.  
UTAH ATTORNEY GENERAL'S OFFICE  
CHILDREN'S JUSTICE DIVISION  
5272 COLLEGE DR STE 200  
SALT LAKE CITY, UT 84123  
EMAIL

Mr. Ronald J. Yengich, Esq.  
YENGICH RICH & KAIZ  
175 E 400 S STE 400  
SALT LAKE CITY, UT 84111  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL



**MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

JUDGE: Hon. Paul Cassell

COURT REPORTER: none

COURTROOM DEPUTY: Trisha Little

INTERPRETER: n/a

CASE NO. 1:03cv-00036 PGC

Bedeger v Westbend

Approved By: Paul Cassell

**APPEARANCE OF COUNSEL**

Pla Trent Waddoups  
Dft Scott Ast

DATE: Tuesday, 02/22/2005

MATTER SET: Telephone Conference

**DOCKET ENTRY:**

Telephone conference held. After discussion, the trial date of 03/28/2005 is stricken and reset for 4 days beginning 04/25/2005 at 8:30 a.m. The final pre-trial conference remains on 03/14/2005 at 3:00 p.m. Motions in limine are due 03/02/2005. Responses due 03/09/2005. Settlement negotiations are to be completed by 04/04/2005. The Court will issue its standard trial order.

54

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH    CENTRAL DIVISION**

---

**UNITED STATES OF AMERICA**

**Plaintiff(s),**

**vs.**

**JAMES MICHAEL BURRIDGE**

**Defendant(s).**

---

**Case No. 2:05CR75DB**

**ORDER APPOINTING COUNSEL**


The defendant, **JAMES MICHAEL BURRIDGE** requested the appointment of counsel on **2/24/05**, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

**IT IS HEREBY ORDERED** the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

**DATED** this 24 day of February, 2005.

**BY THE COURT:**

  
\_\_\_\_\_  
David Nuffer  
United States Magistrate Judge

7

alp

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00075

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Mr. L. Clark Donaldson, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH    CENTRAL DIVISION**

---

**UNITED STATES OF AMERICA**

**Plaintiff(s),**

**vs.**

**MITCHELL HEMSLEY**

**Defendant(s).**

---

**Case No. 2:05CR80PGC**

**ORDER APPOINTING COUNSEL**

The defendant, MITCHELL HEMSLEY requested the appointment of counsel on 2/24/05, and at that time the court determined the defendant qualified for the appointment of counsel under 18 USC § 3006A.

Therefore,

**IT IS HEREBY ORDERED** the Federal Public Defender, for the District of Utah, is appointed to represent the above named defendant in this matter.

**DATED** this 24 day of February, 2005.

**BY THE COURT:**



---

David Nuffer  
United States Magistrate Judge



United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00080

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.  
US ATTORNEY'S OFFICE

/  
EMAIL

Jamie Zenger, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

/  
EMAIL

US Probation  
DISTRICT OF UTAH

/  
EMAIL

# United States District Court

## CENTRAL DISTRICT OF UTAH

UNITED STATES OF AMERICA

ORDER OF DETENTION PENDING TRIAL

v.

Mitchel Hemsley

Case Number:

2:05CR80PGC

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

### Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4)
- ☐ an offense for which the maximum sentence is life imprisonment or death
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_ \*
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

### Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more prescribed in \_\_\_\_\_
- ☐ under 18 U.S.C. §924(c)
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

### Alternate Findings (B)

- ☐ (1) There is a serious risk that the defendant will not appear.
- ☐ (2) There is a serious risk that the defendant will endanger the safety of another person or the community

### Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

### DEFENDANT APPEARING ON A WRIT FROM STATE CUSTODY

*elected for removal state custody*

### Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: February 24, 2005

*[Signature]*

Signature of Judicial Officer

MAGISTRATE JUDGE DAVID NUFFR

Name and Title of Judicial Officer

\*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 et seq); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 et seq); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cr-00080

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Leshia M. Lee-Dixon, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Jamie Zenger, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

**FILED**

CLERK, U.S. DISTRICT COURT

February 22, 2005 (3:07pm)

DISTRICT OF UTAH

HART,

Plaintiff,

vs.

KENNARD,

Defendant.

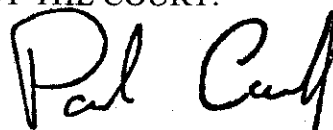
ORDER OF REFERENCE

Civil No. 2:05-CV-00051 PGC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(B) and the rules of this Court, the above entitled case is referred to Magistrate Judge Brooke Wells. The magistrate judge is directed to manage the case, receive all motions, hear oral arguments, conduct evidentiary hearings as deemed appropriate, and to submit to the undersigned judge a report and recommendation for the proper resolution of dispositive matters presented.

DATED this 22<sup>nd</sup> day of February, 2005.

BY THE COURT:



Paul G. Cassell  
United States District Judge

4



tsh

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:05-cv-00051

True and correct copies of the attached were either mailed, faxed or e-mailed  
by the clerk to the following:

Christopher George Hart  
SALT LAKE COUNTY JAIL  
233938  
3415 S 900 W  
SALT LAKE CITY, UT 84119-4103

Mr. David E Yocom, Esq.  
OFFICE OF THE DISTRICT ATTORNEY  
2001 S STATE ST STE 3600  
SALT LAKE CITY, UT 84190-1200  
EMAIL

United States District Court  
for the District of Utah

**Petition and Order for Warrant for Offender Under Supervision**

Name of Offender: **Ashley Hill**

Docket Number: **2:04-CR-00628-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**

Date of Original Sentence: **November 30, 2004**

Original Offense: **Theft or Receipt of Mail Matter**

Original Sentence: **36 Months Probation**

Type of Supervision: **Probation**

Supervision Began: **November 30, 2004**

**PETITIONING THE COURT**

☒ To issue a warrant to be placed as a  
detainer and toll the supervision term

In custody:  
Salt Lake County Adult Detention Center

**CAUSE**

The probation officer believes that the offender has violated the conditions of supervision as follows:

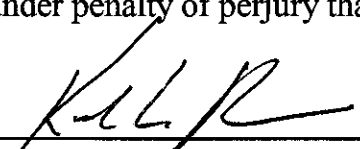
**Allegation No. 1:** On February 13, 2005, the defendant was arrested and charged in Third District Court in the District of Utah with Forgery and forgery-related charges. Police reports indicate the defendant was apprehended by law enforcement officers as she was attempting to cash a forged check on February 13, 2005. The defendant made statements at the time of her arrest admitting her involvement in the offense.

**RECEIVED**

FEB 23 2005

OFFICE OF  
JUDGE PAUL G. CASSELL

I declare under penalty of perjury that the foregoing is true and correct

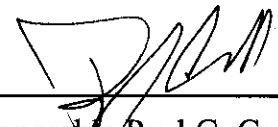
  
Karl L. Richins, U.S. Probation Officer  
Date: February 18, 2005

**THE COURT ORDERS:**

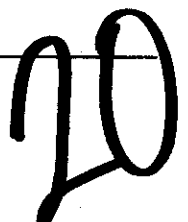
☒ The issuance of a warrant to be placed as a  
detainer and tolling of the supervision term

☐ No action

☐ Other

  
Honorable Paul G. Cassell  
United States District Judge

Date: 2/23/05



tsh

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:04-cr-00628

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Lynda Rolston Krause, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States District Court  
for the District of Utah

**Request and Order to Withdraw Petition for Action**

FILED  
CLERK, U.S. DISTRICT COURT  
FEB 23 A 11:49  
DEPUTY CLERK

Name of Offender: **Brandon Wyatt**

Docket Number: **2:02-CR-00313-001-PGC**

Name of Sentencing Judicial Officer: **Honorable Paul G. Cassell**

Date of Original Sentence: **August 13, 2002**

Original Offense: **Possession of a Stolen Firearm**

Original Sentence: **5 Months BOP Custody/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 9, 2002**

**PETITIONING THE COURT**

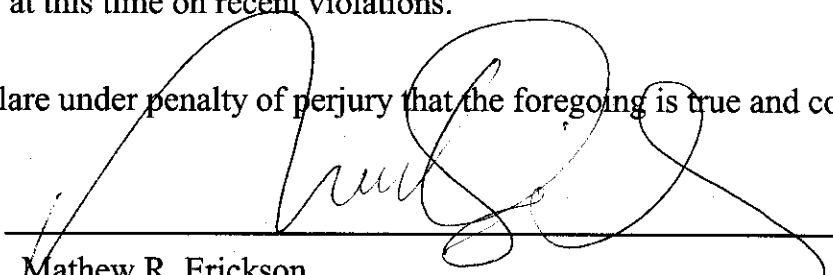
☒ To withdraw the petition dated February 7, 2005, and request no action be taken.

**CAUSE**

On February 18, 2005, the defendant was arrested by the Utah Highway Patrol. The defendant was then delivered directly to the United States Marshals Service, who will in turn transport him to the United States Bureau of Prisons to serve his previously ordered sentence.

It is respectfully requested that the underlying petition be withdrawn and the defendant serve his sentence with no further action being at this time on recent violations.

I declare under penalty of perjury that the foregoing is true and correct



Mathew R. Erickson

U.S. Probation Officer

Date: February 18, 2005


**RECEIVED**

FEB 23 2005

OFFICE OF  
JUDGE PAUL G. CASSELL

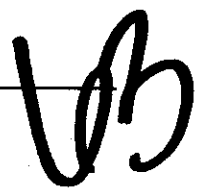
**THE COURT ORDERS:**

- ☒ That the petition issued February 7, 2005, be withdrawn
- ☐ No action
- ☐ Other



Honorable Paul G. Cassell  
United States District Judge

Date: 2/23/05



tsh

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cr-00313

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

Mr. Stanley H Olsen, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL

Scott Keith Wilson, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

FILED  
CLERK, U.S. DISTRICT COURT  
IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION  
BY: DEPUTY CLERK

UNITED STATES OF AMERICA,

2:02CR 0349PGC

Plaintiff,

vs.

O R D E R

DAVID HATTON,

Defendant.

Based upon the motion of the United States of America, and for good cause appearing, namely, the reason set forth in the motion by the United States, this Court hereby dismisses the Indictment against the above named defendant.

DATED this 23rd day of February, 2005.

BY THE COURT:



PAUL G. CASSELL  
United States District Court

23

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office, and that a copy of the foregoing MOTION TO DISMISS INDICTMENT and PROPOSED ORDER was sent to all parties named below, this 22 day of February, 2005.

Wendy M. Lewis  
Federal Public Defender  
46 West 300 South #110  
Salt Lake City, Utah 84101  
Facsimile: 524-4060

Alison Turner

tsh

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cr-00349

True and correct copies of the attached were either mailed, faxed or e-mailed  
by the clerk to the following:

US Probation  
DISTRICT OF UTAH

,  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH

,  
EMAIL

Felice J. Viti, Esq.  
US ATTORNEY'S OFFICE

,  
EMAIL



FILED  
CLERK, U.S. DISTRICT COURT

2005 FEB 23 P 4:19

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION  
DEPUTY CLERK

UNITED STATES OF AMERICA

Plaintiff(s),

vs.

MANUEL LOPEZ-LUZ

Defendant(s),

PRETRIAL ORDER PURSUANT  
TO RULE 17.1 F.R.Cr.P.

Case No. 1:05CR16PGC

The above-entitled action came on for pretrial conference February 22, 2005, before David Nuffer, United States Magistrate Judge. Defense counsel and the Assistant United States Attorney were present. Based thereon the following is entered:

1. A jury trial in this matter is set for 5/2/05, (1 days) at 8:30 a.m.. It appears the trial date is appropriate if the matter is to be tried. Proposed instructions are to be delivered to Judge Paul G. Cassell by 5/2/05 along with any proposed voir dire questions.

2. The government has an open file policy re: discovery.

Yes X No       

The government shall provide defense counsel with a copy of the defendant's criminal history. Defense counsel shall not permit further dissemination of the document.

8

3. Pretrial motions are to be filed by: 3/15/05 at 5:00 p.m.

4. It is unknown if this case will be resolved by a negotiated plea of some kind. Plea negotiations should be completed by 4/29/05, the plea deadline. Counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers for the district judge whether the matter will proceed to trial. If negotiations are not completed for a plea by the plea deadline, the case will be tried.

5. Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

6. Defendant's release or detention status: Detained.

7. All exhibits will be premarked before Judge Paul G. Cassell's clerk before trial.

8. Other order and directions are: Discovery has been provided.

9. Interpreter Needed: Yes X No     Language Spanish

DATED this 22 day of February, 2005.

BY THE COURT:



---

David Nuffer  
Magistrate Judge

tsh

United States District Court  
for the  
District of Utah  
February 24, 2005

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 1:05-cr-00016

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

Dustin B. Pead, Esq.  
US ATTORNEY'S OFFICE  
,  
EMAIL

Viviana Ramirez, Esq.  
UTAH FEDERAL DEFENDER OFFICE  
46 W BROADWAY STE 110  
SALT LAKE CITY, UT 84101  
EMAIL

United States Marshal Service  
DISTRICT OF UTAH  
,  
EMAIL

US Probation  
DISTRICT OF UTAH  
,  
EMAIL